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OR,

AN INQUIRY INTO THE SCRIPTURAL DOCTRINE

OF

MARRIAGE AND DIVORCE.

ADDRESSED TO

THE TWO HOUSES OF PARLIAMENT.

John Ireland

FIRST PUBLISHED IN 1801, AND NOW REPRINTED BY DESIRE.

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PREFACE.

THE following Treatise was first published in 1801. It appeared without a name; but the writer was not long undiscovered; and, as it contains a discussion of some of those passages of Scripture which have been recently brought into debate, repeated applications have been made to me for it. Having only my own copy, and not knowing where to procure another, I have therefore complied with the solicitation to reprint it. The circumstances which first induced me to enter into this question are stated in the opening, and towards the conclusion, of the pamphlet. Though not essential to the argument, they occupy but

a small space ; they serve to excuse my interference with a public debate ; and they will convey to the reader the impressions which, at the moment, were made on society by the subject itself.

It is only necessary to add, that the Prelate, so often mentioned in the course of this discussion, was DR. HORSLEY, then Bishop of Rochester. I had the honour of some acquaintance with him before the dispute arose ; and I must always look back, with pleasure, to those early opportunities of meeting him which were kindly afforded to me by the late Archbishop of Canterbury, at Lord Auckland's residence near Bromley. It is a still greater satisfaction to my mind to state, that, after the first emotions occasioned by the discussion, he desired to see me again, and that the interview took place at the house of our common friend, the late Dean of Westminster.

The temper of Dr. Horsley was sudden and vehement; but his nature was kind. In the tumult of his feelings, his judgment was often obscured; and he confounded the "worse" with the "better cause." The cloud, raised by the too precipitate course of his own "fervid wheels," took from him the distinct view of the objects around him. But, after a pause, his mind recovered its proper direction; and his more collected thoughts seldom failed to do homage to truth. His acknowledgments were ever open and generous, and ready as his errors. He was raised far above all lurking and lengthened resentment; and, the storm of passion once past, he became gentle, and placable as infancy itself.

He is gone, with all those friends in whose society I have seen him. I feel, that I am fast following them. One circumstance consoles me, that if, in the con-

duct of this argument, any expression has escaped me, stronger than was required by the necessity of the case, I have lived to express my concern for it, and to offer this open testimony to the goodness of heart, united with greatness of talent and acquirement, in that distinguished man.

Westminster,

Jan. 5, 1821.

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NUPTIÆ SACRÆ.

MY LORDS AND GENTLEMEN,

AMONG the debates which distinguished a late Session of Parliament, those which took place in both Houses upon the Bill proposed to you "for the punishment, and more effectual prevention, of the crime of Adultery," were, in their own nature, sufficiently remarkable, and drew after them a more than usual attention from the public. I will not take upon me to renew the regret excited in the minds of many excellent persons by the temper which was allowed to mingle itself with those discussions. I

will only say, that the Bill was combated with a vehemence apparently unexpected by the original mover of it ; and that the agitation which it produced within doors, was prolonged by public controversies on either side, when the decision of the Lower House against it had made all further expression, whether of acquiescence or opposition, equally unavailable. But, before your prorogation, notice was given in both Houses, of a determination to renew the proposal in the approaching session. I have, therefore, deemed it not foreign from my duty, to calm, if possible, the emotion that has arisen from some mistaken points of it ; and before the urgency of the moment calls on you again for a decision, to state to you, in this Address, what may be reasonably concluded as to the principles on which such a measure may be founded. I make no apology for the liberty I take. A subject which involves so important a

part of domestic happiness, appeals to every man who has a conjugal interest to protect; a subject, too, in which that interest is so intimately connected with the Divine laws, cannot be shut to ecclesiastical discussion.

It was rightly observed, by one of the foremost of the disputants, that "the Divine law had been much brought in question" upon this measure; and another of them has very naturally expressed his wish, that the subject might be duly considered; the consequences resulting from it being of "too serious a nature to be suffered to rest in doubt and uncertainty." This, of itself, would tempt me to give it the precedence in the consideration I have to bestow upon it. But my fate is somewhat singular: the friends and enemies of the measure have appealed, in common, to the Scriptures, in support of their opposite persuasions; I shall have to encounter a partisan from

each side. My business will be, not to fortify the judgment of one of them against the fancy of the other, but to oppose what I conceive to be the equal error of both. A noble Earl has wished to prove, that the adulterous parties are *commanded* by Heaven to intermarry; and he has been reprehended by a right reverend Prelate for coming to the House with a quotation, inapplicable to his purpose, from the Law of Moses. In his turn the learned Prelate has pronounced, that all such intermarriages are gross and continued adulteries; that they are contracted in defiance of the Divine will, and consequently incur the pain of damnation. And this interpretation he draws from the Law of Christ; but in a manner nearly as summary as that of the noble Earl, and, to my apprehension, altogether as unconvincing. Permit me, therefore, in aid of your parliamentary view of the question, as it is connected with Scrip-

ture, to enter more largely into the nature of both these institutions. The subject, however treated, will have somewhat of antiquity in it, and will be necessarily remote from those which engage your ordinary attention. But I trust to that patience of investigation, and that solidity of judgment, which Parliament has so often manifested. If, therefore, my reasoning should appear now and then too scholastic, or too critical, I hope you will give me credit for making it finally subservient to the purpose of your debate; and you will pardon me (since these authorities are essential to the cause I have to treat) if some father of the church partakes, from time to time, in the argument, or if a General Council is called in to assist the deliberations of a British Senate.

It has been usual with too many writers to represent the Law of Moses as a system, not only of moral laxity, but almost of profaneness itself, when compared with that of

Christ. This unfavourable opinion seems to have arisen from the difficulty of reconciling the operation of one of these institutions with that of the other. The view of two revelations in succession, the latter correcting, but corroborating, the former,—the Gospel crowning the local provisions of the law with a scheme of universal benefit, and combining its apparent opposition of doctrine with a substantial agreement of design ; this, I say, has been of too extensive and complicated a nature, not to be misunderstood by some, and misrepresented by others. The completion necessary to the earlier dispensation has been regarded as the condemnation of it ; hostility has been supposed where a real union has subsisted ; and in this sense also it has happened, that “ what God has joined together, man has ventured to put asunder.”

There can be no question as to the great difference of the outward provisions of the

two systems ; but the earlier of them will acquire a considerable degree of veneration with us, and be found to approach much nearer to the object of the Gospel, if viewed, as it ought to be, not merely in comparison with the more perfect system which has succeeded it, but with the preceding customs, upon which it was itself a restraint, of great moral importance. Eusebius, who is always so eloquent when he describes the simplicity and purity of the patriarchal ages, informs us, that the minds of the ancient servants of Heaven were tempered with so much sanctity, that they were in no need of those strict regulations which the progress of corruption afterwards made so necessary ; and which we see so cautiously stated in the law of the Israelites. Their own piety was their unwritten law ;* and (to apply this to the present purpose) they were

* Φυσικοῖς λογισμοῖς, καὶ νόμοις ἀγράφοις. Euseb. Præp. Ev. Lib. vii. c. 8.

safely trusted with that power of marriage and divorce which, it was certain, they would not abuse. What is more observable, after the communications of Heaven with some of them, tending to the final covenant between God and man, they circumscribed themselves in the use of the nuptial liberty which they might have indulged. And this we see in the significant action of Abraham (when now the child of promise was to be born), and in the voluntary forbearance from repeated marriages by Isaac,* and others. It was the intervening time between these holy men and Moses, and the impure connection with the Egyptians, which brought with it the corruption of manners

* *Μὴ γαμεῖν, μὴ χρῆσθαι παιδικαῖς, &c.* *ibid.* There was a general notion in the early church, as to the Polygamy of the Patriarchs, that it was practised "donec mundus repleretur." This expression of Tertullian, *Exhort. ad. Cast. c. 4.* would not have much influenced me, if I had not observed the same sentiment in another part of Eusebius, *Dem. Evang. lib. i. c. 9.* and in Cyprian, *de Habit. Virg.*

already alluded to; and till the law threw a better restraint upon their practice, they indulged a vicious and excessive polygamy, without any sufficient solemnities of marriage, and dismissed their wives, and even their children,* from their houses whenever they pleased. In short, the important power of repudiation was not only left to the chance of personal motives on the part of the husband, but (an important consideration) to his sole and personal execution.

When a nation was at length to be established in the Land of Promise, the licentiousness which had perverted the sound use of marriage, was to be corrected. Personal caprice was restrained, in subservience to that gradual amelioration of the moral and

* The succession to property, amid the change of wives, was well guarded by the law, in favour of the children of the first bed. Deut. xxi. 15. It prevented, also, the rash dismissal of the child by the father. If he had a complaint against his son, he was to bring him before the Judge. Ibid. ver. 18.

social system which was destined to take place; and the violation of marriage, by adultery, incurred a punishment, which was the necessary consequence of the temporal superintendence of the Deity as king of the Jews. This was death.* Lesser causes of divorce were, indeed, allowed, such as might fairly be interpreted from the objection of "uncleanness" to the wife, whether this arose from some bodily inaptitude to the purpose of marriage, on her part, or some fixed moral depravity which yet did not

* In the later times of the Jewish state, when, from the great frequency of adultery, this punishment of it became impracticable; there were certain substitutes for it, and some of them of a very strange nature. Extraordinary fasting was one, and, indeed, might well enough be expected; but who, except the Rabbins, could have thought of exposing the adulterer naked, if it were summer, to the flies and wasps; and of steeping him for a certain period, if it were winter, in cold water, up to the chin, &c. They have a notion that Adam, after his transgression, was subject to this latter punishment, for 130 years together! Buxt. Synag. De quibusdam Judæorum Poenis.

rise to the crime of adultery.* But in the execution of divorces, that was now to be done with certain forms, and some share of publicity, which before was practised in solitude, and at will. The wife could no longer be sent away but after a declaration in presence of grave and authentic witnesses;†

* The school of Sammah is generally thought to have been wrong in affirming this "uncleanness" to be "adultery." The Jewish nation went mostly with their favourite Hillel, who interpreted it with a latitude which their corrupt practice carried to its utmost bounds. He held the word to signify "any cause of dislike." And this is the opinion we shall presently see expressed to the Saviour, by the Pharisees. St. Matt. xix. Lightfoot, however, whose Rabbinical acquirements were so conspicuous, thought with Sammah. Harm. Ap. And on St. Matt. v. he says, "Our Saviour did not abrogate Moses's permission of divorce, but tolerates it; yet, keeping within the Mosaic bounds, that is, in the case of adultery, condemning that liberty in the Jewish canons which allowed it for any cause."

† Maimonides de Divort. Lib. i. gives a list of ten conditions to be performed by the husband, for the divorce he desired. By the 8th of them, he must make his determination before witnesses. Buxtorf states the number of these to be three, "trium gravium," &c. Synag. Jud.

and a written instrument, prepared by a public notary, and signed and sealed by the witnesses (for such was the practice), succeeded to a verbal order. It is in this guarded sense we are to understand that provision which has given so much cause of impure triumph to the levity of some, and of religious offence to the simplicity of others. "When a man hath taken a wife and married her, and it come to pass, that she find no favour in his eyes, because he hath found some uncleanness in her; then let him write a bill of divorcement, and give it in her hand, and send her out of his house." Deut. xxiv. 1. It was the practice also to exhibit the declaration before the judge. However, he had no power to overrule the proceeding, since (in the phrase adopted by our own lawyers) it was of voluntary, not of contentious, jurisdiction. He was obliged to accept the husband's official notice, which being thus made, whether

with his approbation or without it, was valid in law. The judge could only take cognizance in questions concerning her marriage portion, which the woman, on certain occasions, was made to forfeit, either entirely, or in part, as her conduct seemed to deserve. But in divorces, where no litigation of property occurred (for much was done by private arrangement), the practice was as has been described. Grotius has compared this application to the judge, with that of the Romans to the prætor, for the purpose of manumission. He knew the will of the master; and partook in the forms of the liberation; but he had no controul over it, nor so much as the power of advice concerning it.*

Such was the prescription of the Jewish

* Adnot. in Serm. Dom. It is supposed here that the law was satisfied as to the age, &c. of the person who received manumission. I am speaking only of the will of him who resolved to grant the liberty. For the other qualifications, see Instit. Lib. i. tit. 5, 6.

law. Let us now inquire what was the object of it. Generally speaking, it was the safeguard of the woman ; since an act, thus deliberately executed, must afford a longer time for reflection on its consequences, than a hasty rejection by a word pronounced under the influence of passion. " Cum libellus iste," says Spencer, who catches the true meaning of this part of the provision, " non nisi subductâ ratione et animo sedatiore scribi potuerit, multis inde divortiis obstaculo fuit."*

But there is a more particular reason still for the written record of this act. A woman, thus divorced, was at liberty to marry another person. " She may go and be another man's wife." Deut. xxiv. 2. But the bill, itself, of divorcement, might be for ever a bar in the hands of the wife (if she would so use it) against the resumption of her by the husband who had caused it to be exe-

* De Rit. Heb. p. 654.

cuted upon her. There was a legal interval to be observed between the time of her divorce and her marriage with another ; and within that period the husband and wife might, by the practice upon the law, be reconciled, and come together again ; if he repented, and if she would waive her new privilege of a perpetual alienation from him. Maimonides fixes it at ninety days, that of the divorce not included. But here ended her power of reunion: for if she then allowed another to possess her, the former husband could never renew his connection with her, whatever might be their mutual wishes, or mutual regret. " If the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house ; or if the latter husband die, which took her to be his wife : her former husband, which sent her away, may not take her again to be his wife, after that she is defiled, for that is abomination

before the Lord." Deut. xxiv. 3, 4. There was also one, and only one, restriction upon her liberty of remarriage. On account of the sanctity of his situation and character, and through the force of an opinion which afterwards marked the apostolic age, and attached a blemish of immorality to ecclesiastics of an higher order in the Christian church, if they were at all implicated in second marriages, she could not be united with the high-priest. He was to marry only a virgin. "A widow, or a divorced woman, or profane (a gentile), or an harlot, these shall he not take; but he shall take a virgin of his own people to wife." Levit. xxi. 14. With this single exception, the woman enjoyed that full liberty of remarriage which her bill of divorcement expresses. I subjoin the form of the substantial part of it:*

* This is quoted from Grotius, *ibid.* That given by Buxtorf is translated with a certain difference. The Hebrew form is to be found in Maimonides, *De Div.*

"Meâ sponte, nullius coactu, te uxorem hactenus meam dimittere a me, deserere ac repudiare decrevi; jamque adeo te dimitto, desero ac repudio, atque a me ejicio, ut tuis sis potestatis, tuoque arbitrato ac lubitu quo libet discedas; neque id quisquam ullo tempore prohibessit. Atque ita dimissa esto, ut cuius viro nubere tibi liceat."

This I conceive to be the *rationale* of the Jewish law of marriage, and this is the sum of what I would observe to the noble Earl, on a subject concerning which he has allowed himself to talk so very imperfectly. And I will take the liberty of observing, by the way, that the custom, which has too much prevailed, of going to Parliament with some fragment of Scripture, in order to throw the highest of all sanctions over an unexamined or an untenable opinion, is

p. 2. Buxtorf observes, upon it, that it was always written in twelve lines, neither more nor less. Synag. Jud.

equally disingenuous and irreverent. The only satisfaction arising from such an appeal is, that it finally leads to the overthrow of the argument which it would, at all hazards, support. A sounder view of the question, which will never fail to come from some person or other, impatient of the attempt to pervert Revelation from its purpose, corrects the inaccuracy of an hasty inference. Truth makes her way through the very provocation of the momentary error; and the more largely the Divine institutions are surveyed, the more triumphantly is "wisdom justified of her children." But I return to the subject immediately under review.—The noble Earl now sees the strange application he has made of one of the provisions of the Law of Moses. The adulterous parties were to be put to death, both the man and the woman. But the noble Earl is determined they shall intermarry; and how does he prove the com-

mand for it? By adducing this solitary text, "If a man find a damsel, and lie with her, she shall be his wife!"—But the slightest view of the passage to which he has appealed, must have convinced him, one should think, that it applied exclusively to the dishonour done to a virgin not yet betrothed.* The offender must marry her; and, as a punishment, he was to lose for ever the common power of divorce against her. "Because he hath humbled her, he may not put her away all his days." Deut. xxii. 29. If she were contracted to a marriage, not yet solemnized, and thus defiled, the violator suffered death; and the only difference between the punishment of this crime, and defilement after marriage, was in the mode of executing the offender. In

* There was, indeed, another case in which divorce was prohibited. He who falsely asserted that his wife was not "found a maid," by him, "might not put her away all his days." He also paid a fine of a "hundred shekels of silver" to her father. Deut. xxii. 19.

the former case, death was given by stoning; in the latter (as the Jews interpret,) by strangling.* Such, then, is the reverential manner in which we ought to view the Law of Moses, and such was the remedy applied by it to the licentiousness with which the Jewish divorces had been made;—a licentiousness which seldom fails to be seen, where the power of repudiation is left to personal authority, and private passion, and not solemnly resolved upon with a certain attention to outward character, and under the eye of public justice. And the same laxity, not corrected by the influence of Revelation, we find, so long afterwards, among the Romans, with whom a short formula pronounced by the husband, or indeed a message sent by a freedman (for Juvenal is legally correct,†) was sufficient

* This is inferred from Deut. xxii. 22. Levit. xx. 10, &c. The daughter of a priest, for the crime of fornication, was to be burnt. Levit. xxi. 9.

† Collige sarcinulas, *dicet libertus*, et exi. Sat. 6. The

for the dismissal of the wife. Of the same nature, too, is the custom which prevails at this time in many parts of the East, where the sending home of the goods brought by the wife is a valid act of repudiation, without a word spoken by the husband.—And now, my Lords and Gentlemen, what is the result from this part of the inquiry, for your approaching debate?—The Law of Moses, though the noble Earl should draw it once more from his pocket, for the purpose, contains nothing that will answer his wishes. The utmost that could be obtained from it, might be an inference from analogy; but no such inference can be good against the express terms of a statute: and, in the

last word was essential to one of the formulæ announcing divorce; and such is the allusion of Seneca, in his reprehension of the frequent divorces brought about by the Roman women. *Exeunt matrimonii causâ, nubunt repudiî.* De Benef. Lib. iii.—From Maimonides we find that when the bill of divorcement was duly executed, the Jewish husband had the option of giving it to his wife in person, or of sending it by a deputy. De Div.

present case, though the defiler of a virgin not yet betrothed, was compelled to marry her, the adulterer, it is obvious, could not follow the same rule : for both himself and the companion of his crime were capitally punished.—The only thing to be observed by you (and it carries much importance with it) is, that the principle of the second marriage of a divorced woman, during the life of the first husband, is fully acknowledged. The only thing to which moral turpitude attached, was the reunion of the man and wife after divorce, and intermarriage with any other. This is called “abomination before the Lord;”—and the reason assigned for this prohibition, by Grotius, who delivers the sense of Christian antiquity upon it, was, doubtless, the true one :—it was, says he, *ne, specie divortii, alii aliis uxores darent usurarias.*

I now leave the subject of the Jewish marriages. It was necessary, however, to

view it in this light, on account of the use I shall presently have for it. You have seen, that the bill of divorcement was not founded in that spirit of moral laxity, which so many have objected to it; but that it was introduced, with its attendant solemnities, to correct, as far as it was permitted, the previous licentiousness of marriage, and to prepare the minds of men for the yet stricter obligations of the Gospel. When, at length, by the progress of the Divine condescension, the world was to receive that purity of life, both private and social, which was more worthy to accompany the Christian dispensation, additional restrictions took place on the Mosaic Law, which had been in itself no unimportant check on the ancient state of manners.

In the discourse of Christ on the Mount, he had delivered to his disciples an important doctrine concerning marriage. "It hath been said, whosoever will put away

“ his wife, let him give her a writing of divorcement. But I say unto you, that
“ whosoever shall put away his wife, saving
“ for the cause of fornication, causeth her
“ to commit adultery ; and whosoever shall
“ marry her that is divorced, committeth
“ adultery.” Matt. v. 31. The Pharisees, a learned and powerful sect, had doubtless heard of this restriction of their law ; they therefore resorted to him for the purpose of knowing the truth, and supporting their own authority. Matt. xix. 3.—The Saviour confirms his doctrine ; and in answer to the plea they urge of their former liberty of divorce “ for every cause ” (though another of their schools had somewhat contracted this latitude, interpreting it, as the present Jews do, only of “ many causes, ”) he declares at once the necessity of the old permission, and the present abridgment of it. He farther reminds them of the original marriage ; by which (as it is generally in-

terpreted) no divorce was allowed. This, however, (if it was thus absolute,) he did not mean to insist upon ;* since offences would come, and some escape must still be left for the sake of a social remedy. He makes the nearest approach which human

* The difference of opinion between Catholics and Protestants is this. We draw the liberty of divorce from the fornication clause. They wave this, and rest altogether on the general declaration, "What God hath joined, let not man put asunder." Bellarmine, the universal antagonist of Protestantism, has expressly treated this subject, and made the text, just quoted, the foundation of his reasoning against us. *De Matrim.* But Protestants have sometimes been very careless in asserting the indissolubility of the first marriage, and the perfect renewal of it by Christ, while they yet allow divorce "a vinculo" on account of fornication. But either the original marriage had in it the tacit exception of fornication, or the Saviour did not completely restore it,—or the reformed Church is wrong in allowing any thing more than a separation of the married parties during life. I have rather leaned to the second supposition. Christ might in argument refer to the first institution, without meaning to re-establish all its obligation. A Jewish Prophet had made a similar reference. *Malachi*, ii. 16. But the marriage of Paradise was much farther from being renewed under that system, than our own.

circumstances would allow, to the indissolubility of the nuptial bond, and establishes adultery as the one and only cause to be hereafter admitted.

But there is a difficulty which must be surmounted, ere I enter upon this part of the subject. Was it adultery, properly speaking, which the Saviour had in contemplation, when he proposed his law?—In this, and the corresponding passages, the term for the offence, which our translators have used from the same unvarying original, is fornication. In the Jewish law, fornication and adultery had been regularly distinguished from each other, both in name, and in the mode of punishment; and it was to Jews who had long understood and acted upon these distinctions, that the Saviour now addressed himself. It has been concluded, therefore, by some,* that the only sufficient cause of divorce was forni-

* See Whitby in loco.

cation committed before matrimony, and discovered after cohabitation. But what is the principle of this new interpretation? That she who has previously united her person with one man, cannot become the wife of another. It is obvious to what an extremity of danger the marriage system among us must be exposed, and what an alarming extent of guilt must be involved in the present operation of it, if this is really a maxim of the Gospel. But, indeed, those who have produced the opinion, do not insist exclusively upon it: they still allow that the usual meaning may be the true one; and, happily for the argument, they affirm that, under either interpretation, whenever a marriage is lawfully dissolved, it is also lawful to marry again. And this defeats the former position: for, if even a casual union renders the persons unalienable from each other, far stronger is the inference from the fixed condition of mar-

riage; and, if fornication is to be the sure bond of connection in the first case, adultery can never be admitted for the dissolution of it, and for the liberty of remarriage in the second.

There is still another branch of this opinion. By the custom of the Jews, a certain interval took place, from the time of the betrothing to the completion of the marriage.* The liberty of divorce has, therefore, been thought to belong only to persons thus mutually pledged, for the dissolution of contracts hitherto imperfect: and fornication has been excepted from the full state of matrimony, and applied to the offences committed against the incipient obligation, during the continuance of the *Sponsalia*.

* From the instance of Rebecca—Gen. xxiv. 55. some have inferred that the interval was ten months;—days, in Scripture language, being sometimes expressed for months. However, Buxtorf gives the term of eight days, and describes the occupation of the parties. *Proximo Octiduo, &c.* De Jud. Nup.

It is true, a betrothed woman was, by anticipation, called a wife.* In case of misconduct, she was also to be divorced, though the parties had not yet come together, and a bill for that purpose was necessary to the voiding of the incomplete contract, though the terms of it were different from those above quoted.† But, to waive all smaller reasons,‡—it will be

* The angel bids Joseph take unto him Mary his wife, whom he had thought of putting away, though as yet they were only betrothed. However, the common term for wives elect, was *μνηστῆρ*, the use of which is preferred by the Christian Fathers. The equivalent employed by Josephus is *συμπόδον*. Julius Pollux gives another term, which the Pagans sometimes used.

† The substantial Clause of it was "Conditione tuâ non utar." In certain cases a divorce was necessary, though the persons were not even betrothed. This happened when the brother of the deceased husband would not marry his widow. *Maim. De Div.*

‡ Christians, whether Protestants or Catholics, have never applied divorce to any case but that of full marriage:—it is a hard supposition, too, that by putting away a person who has not yet fulfilled the characteristic description, "they two shall be one flesh," a man can cause her to commit adultery.

sufficient to oppose to this inference, the general sense of the transaction, and the wideness of meaning which the term in question had attained. The proposal made to Christ was evidently allusive, in the mind of the speakers, to the general subject of matrimony. It arose from the universal practice that had prevailed in divorces after full marriage ; and the Saviour would not have given an answer inapplicable to the purpose. At all events, if so minute a part of the obligation had been exclusively intended, there can be no doubt, I think, that Christ, who was now repeating an important part of his own moral law, would have stated it with that precision which became the subject, and which Moses had so particularly observed.—He would not have declared himself merely on the preliminary state of marriage, which was so short in duration, and therefore liable to so few accidents, and left the marriage itself,

a point of so much higher consequence, to a tacit and indirect inference of an opposite nature. No : his answer is given generally ; and whether the *Sponsalia* are involved in it, or not, it manifestly comprehends the full condition of marriage. Besides, there is sufficient warrant from the known use of the term here disputed, to apply it openly to the case of adultery.

Selden observes the Hellenistic meaning of it in the first age of the Gospel, and that it was descriptive of every kind of impure connection. *Omnimodum incestum, seu illicitum concubitum*. St. Paul himself describes the sin of incest by it. 1 Cor. v. 1. Chrysostom uses it in characterising adultery itself : *—and, to mention but a single profane instance, Dio fixes the word on the conduct of one, at the bare mention of whose name, all married virtue turns pale,

* *Μετὰ γάμον πορνεύων.* Vol. V. Disc. 50.

—Messalina.* The choice of the word, therefore, could not have been made with the view alleged. It is rather a generic term, comprehending the sin of licentiousness in general; and, by the nature of the transaction in question, easily applicable to the purpose particularly required:

Such, then, is the nature of the two institutions. By the Law of Moses, divorce for

* Ἐμοιχέσθω καὶ προγαμέσθω. In Vit. Claud.—The most portentous interpretation of *πορνεία*, was that of Milton, who made it mean any thing which should be to the husband as grievous and intolerable as whoredom!—Milton was too well acquainted with Hillel. Indeed, all that he has written on this subject is warped with prejudice; and his great judgment was overborne by his greater passions. There is one master-sophistry which runs through the whole of his *Tetrachordon*: with the general precept of Charity in his mouth, he destroys the particular obligation of the marriage institution.—It is obvious, that the same might be done with every other duty in the Bible. Scripture might be employed in its self-annihilation, and the awfulness and sanctity of its commands might be explained away by its own liberality of spirit, and its merciful condescension to human weakness.

inferior causes was allowed, with full liberty to both parties, of marrying again. By the Law of Christ it was restrained to the cause of adultery only. But what is to be understood of the liberty of re-marriage? Does the divorce obtained by the innocent against the offending party, liberate fully the persons of both? Or, does an incapacity of all subsequent marriage attach to the crime of adultery committed against the first nuptial vow? Here is the great question upon the measure to be proposed to you, as it springs from Scripture. And, since a very learned and zealous Prelate, to whom I have before alluded, has thought proper that the nation should see the sentiments he expressed in Parliament, concerning it, and has thus made them *publici juris*,—I may take the liberty, I hope, of questioning his positions in any way that may be conducive to the proper examination of the subject. Allow me, therefore,

to change for awhile the mode of my address, and to request the particular attention of the learned Prelate himself to this part of my statement.

My Lord, the question I venture to treat with you is not an exclusive one concerning the marriage of the adultress with her seducer, (though, for an obvious reason, you have made it the prominent part of your argument,) but it equally applies to any other marriage contracted by her with one who may not have partaken in her first crime. This is the extent of your principles: and your inference is, that every such marriage, whether with a guilty or an innocent person, is a complete and gross adultery in both,—contracted and maintained in defiance of the Divine prohibition, and therefore incurring the pains of eternal damnation. This follows from your interpretation of the passage, “Whosoever shall put away “his wife, except it be for fornication, and

"shall marry another, committeth adultery;
"and *whoso marrieth her which is put away,*
"committeth adultery."—Allow me to
explain to you why I cannot admit this
interpretation.

I have already observed an impropriety
of sentiment entertained by some concern-
ing the Law of Moses. Your position is
conceived with a similar violence against
the spirit of that revelation; and is, I think,
contrary to the principle which ought to be
observed in every relative view of Judaism
and Christianity. You maintain, that
"Christ lays down his own law," on the
subject in question, "*without regard to the*
"*Law of Moses.*"*—On the contrary, I am
persuaded that this, together with the other
parts of the Saviour's discourse upon the
Mount, where it was first pronounced,
is to be understood on the principle of
respect to the Law of Moses, and of

* Bishop of Rochester's Speech, p. 17.

analogy with the true intent of that institution.

You, my Lord, are not to be informed by any man (and least of all men, by me,) that there was a gracious and a winning condescension in the doctrine of the Saviour towards the Jewish nation, whom he primarily and exclusively addressed ; and this arose from the very nature of his Divine mission to a people, to whom had been committed that ancient covenant which was now to be brought to perfection. I will not dwell on the early submission paid by him to the system of Moses.* He was circumcised, and grew up in obedience to the law, as the children of other Jewish parents. What is of more importance, his ministry shows this spirit of adaptation in a convincing manner :—he entered upon it about the age when the priests and levites as-

* Eusebius calls him, perfect in the Law of Moses : *Τέλειος κατὰ Μωσεία*. Dem. Ev. Lib. i. C. 7.

sumed their office ; and was baptised, as the high priest and others were prepared by water, for their holy functions. Levit. viii. 6. He selected his Apostles and Disciples, with a view to the tribes of Israel and the Sanhedrim. He worshipped in the Synagogue and the Temple: and in his sacred instructions are to be found those arguments, and that train of imagery, which were most familiar to his Jewish hearers.—What is the result from hence to the question between us? If your Lordship's interpretation is adopted, all this previous attention is lost. Those whose minds required so much management with respect to their ancient institution, were suddenly to be shocked with the contempt and reprobation of it ; and he who taught with the dispensation of Moses perpetually in view, is made, at once, to deliver his rule of marriage “ without any regard to Moses's Law ! ”

It was the declaration of Christ himself, to the same persons who first heard him utter this doctrine, that he came "not to destroy the Law, but to fulfil it." And it appears, on all sides, in what manner this was done: by vindicating the moral part of it, in which, was the institution of marriage, from the corrupt glosses of the Scribes; by excusing its necessary imperfections, by adding to it those provisions which were essential to a better sanctity, and by enjoining it, thus purified and enlarged, to the observance of his followers, as his own law, necessary to salvation. Vitringa refers this accomplishing of the Law to a Chaldee word, of which "illustration" is the meaning. Le Clerc states it to be, an adoption of the fundamental purpose of that Law; and, at the same time, an amendment of its unavoidable defects.* And the learned Mede has made

* Non veni ad funditus delendam Vet. Test. dispen-

it consist in that fulness of exposition which it so much required ; in circumstantial additions, and that new modification of it, which a better order of things demanded.* The Law of Moses was, therefore, the ground-work of the Law of Christ. But your Lordship says, that he pays " no regard to it ! "

My Lord, not so reasoned Chrysostom. We find him combating the same error in his age, which we are compelled to combat, after him, in our own. There were some, it seems, who, comparing the old Covenant with the new, observing the difference of sanctity possessed by each, and unable, or unwilling, to reconcile the ap-

parationem ; sed ad eam emendandam, et perficiendam in quibusdam, in quibus perfectior esse potest. And presently he adds, *cujus generis fuerunt omnes mutationes Christi, id est, reformationes.*

* Christus legem perfecit, non tantum eam plenius interpretando, sed etiam novas circumstantias, novamque modificationem addendo. Ap. Poli. Syn.

parent contrariety, grew vehement in the partiality of their opinion, and pronounced the Law of Moses to be the work of the Devil.* He employs himself in correcting this strange error ; and reasons at large, on the genius of the two Covenants. He repeats and maintains the declaration of the Saviour, already quoted, and specifies three modes in which the Law of Moses was fulfilled by him. In the last of these, he asserts, not the contradiction of that Law by Christ, but the adoption of its radical intent, and the improvement of its imperfect provisions. This is, indeed, the contrary of your position : but, what is not a little

* *Ἐκ τοῦ διαβόλου λεγόντων εἶναι τὴν παλαιάν.* Disc. 16. Vol. II. Ed. Et. This notion came, perhaps, from Marcion, who invented two Gods, for the satisfactory interpretation of the discordancies, which he imputed to the Scripture: the Old Testament came from the malignant deity; the New from the beneficent one. Tertullian's fourth book against that heretic, contains an answer to his Antitheseon; in which this doctrine had been taught.

extraordinary, it is to this he attributes the praise of superior precision, in ascertaining the accomplishment of the Jewish dispensation, by the Gospel. The Law, as he argues, is neither abolished nor reprobated, but is taken up, and invested by Christianity, with a greater degree of moral purity. Thus, the ancient precept, "thou shalt not kill," which he adduces, as one instance, is not discredited, but heightened, by the new command, "not to give place unto wrath." And so, says he, are we to reason of all the rest.* The object of the Gospel was, therefore, not to show a disregard to the Law, but to carry it to a higher excellence; not to condemn its obligations, but to point them anew; to respect their primary intention, and to draw it still closer upon its own followers.

* Οὐ γὰρ ἀναίρεσις τῶν προτίμων, ἀλλ' ἐπίστασις καὶ πληρώσεσι ἢ τὰ λεγόμενα. τῷ γὰρ μὴ φονεύειν, οὐκ ἀναίρεσις τὸ μὴ ὀργίζεσθαι, ἀλλὰ πληρώσεσι καὶ πλείων ἀσφάλεια καὶ ἐπὶ τῶν ἄλλων ἀπάντων. Ibid.

And these are the sentiments of Chrysostom, while he is engaged in explaining the very discourse of Christ, in which is the Law of marriage. But your Lordship says, that "Christ laid down his Law, without any regard to the Law of Moses, which he abrogates!"

My Lord, not so reasoned Eusebius. He expressly treats the question, which had occasioned some difficulty in the early ages of the Church; how Christ was, at the same time, so punctual an observer of the Law of Moses, and the author of a new system.* He solves it, by proving the Saviour to be the middle point, as it were, between the two dispensations; the "corner-stone," connecting the Scriptural wall of Judaism and Christianity, on either side.

In confirmation of what was just now advanced, he says, that the whole life of Christ was without any infringement of the

* Dem. Ev. Lib. i. C. 7.

Law of Moses, any disregard to its doctrine. He fulfilled every thing, and abrogated nothing. For, as he argues, had Christ despised the Law, with what chance of attention could he have addressed himself to those, who lived under it? If he taught the destruction of it, how could he affirm, that, in his own person, he came to fulfil it? If he abolished what Moses had appointed, with what propriety could he have claimed the character of that prophetic person, "who, Moses and the Prophets did say, should come?*"—What, then, was the doctrine of Christ? Not that of hostility, but of mere superiority. What was the change he made? When that completion of the Law had taken place, for the purpose of which he came, the larger system of Christianity extended itself beyond the range of Judaism; the application of

* Λύων δὲ τὰ Μωσείας, πῶς ἂν ἐνομιλάσθῃ αὐτοῦς ὑπάρχουσιν, ὁ ὑπὸ Μωσείας καὶ τῶν Προφητῶν κληρονομήσας; Ibid.

whose rites to the whole world, was impracticable : they, therefore, ceased of themselves.* But the Law and the Prophets are still received by Christians ; and in what manner ? Not Judaically, indeed, with the concomitant practice of those ceremonies, which were local and peculiar to Jerusalem, but in that wider sense, in which the ancient Patriarchs had practised sanctity ; and the extension of which, beyond the limits of Judea, the Gospel came to renew. Such is the argument of Eusebius ; proving, amidst their apparent contrariety, the essential union of the plan of the two Covenants : yet your Lordship says, that “ Christ lays down his own Law, without regard to the Law of Moses, which he “ abrogates ! ”

* When the Mosaic system ceased, it did so, per adimplentionem, non per destructionem. This passage of Tertullian agrees with the reasoning of Eusebius, and, indeed, short as it is, comprehends the general opinion of Christian antiquity, on this point.

My Lord, not so reasoned one of your great predecessors in the see of St. David. I know the admiration, in which you justly hold that eminent man. He took an opportunity to combat those who would make us believe, that to clear the Law of Moses from the corruptions of the Pharisees, was the whole object of Christ, in the notice he took of it: and he has triumphantly maintained, that, thus vindicated and improved, the Saviour established it, together with faith in him, as his own Law, necessary to Salvation. The Mount on which Christ delivered his discourse, is succedaneous to Mount Sinai;* and the obligation of Christians to the new rule of moral action, expounded and perfected from the old, stands upon a similar ground with that of the ancient Jews. Here the dispute between

* Legem moralem exposuit et perfecit Christus, atque a Monte (Sinai succedaneo) ut legem suam discipulis suis tradidit. Resp. ad Anim. 12.

Bull and certain of the followers of Luther, is not, whether the Law of Moses had any estimation with Christ: this is allowed on both sides. The question is only concerning the obligation of it, when purified and enlarged, upon Christians. In this moral Law is that of marriage; and, though its provisions have that novelty, and that difference of sanctity, which Grahe has observed, their object is not to throw contempt on the former institution, but to excuse its unavoidable imperfection, and to complete what it had begun.

To this manner of viewing the two institutions, Grotius gives his decided testimony. On the general respect of the Saviour towards the ancient Law, he thus pronounces:—*Nullam juris per Mosem promulgati partem a Christo infringi; at præcepta interim dari meliora quam Lex illa, præsertim quatenus in judiciis observabatur, exigebat; ei tamen Divinæ voluntati convenientia cujus*

vestigia in Mose et Prophetis apparent.—What is still more decisive, he interprets the very Law in question, upon a principle which springs from the original one of Moses: *Sensus enim est, says he, Lex Mosis, ne quid gravius eveniret, tibi de uxore judicium indulsit: tu vide ut tantâ potestate humanę utaris, certus nulla Deo placere divortia nisi quæ summa necessitas extorsit.*—The power of divorce, first granted by Moses, is still retained by Christ; he only restricts it, to cases of extreme necessity; and completes what the ancient Law had, indeed, aimed at, but, from the existing circumstances, could not fully accomplish. Yet your Lordship says, that Christ “laid down his own Law of Marriage, without regard to the Law of Moses, which he abrogates!”

This doctrine of analogy in the principle of the Christian law, receives a general illustration from the terms in which it is de-

livered. So far from paying "no regard" to Moses, the Saviour delivers his new Law in language which is purposely made to approach as near as possible to the old ; and clothes his higher and more spiritual sentiments in words of an inferior, but already received, meaning. Thus, from the ancient declaration, that "whosoever shall kill, shall be in danger of the judgment," he reasons, that, "whoever shall be angry without a cause, shall be in danger of the judgment." But what does he mean by judgment in the second place? Not the forensic judgment of Moses, but the displeasure of God at the future, and metaphorical, bar of Heaven. Yet he employs the former term for the conveyance of his loftier meaning. And why? Because he was reasoning with Jews, and purposely adapted his language to the judicial system by which their actions had hitherto been tried. There is a similar instance of adap-

tation in the very verse just quoted. He had, elsewhere, represented the joys of Heaven under the received image of the "bosom of Abraham." Here the pains of Hell (whatever their nature may be) are threatened under the denomination of Gehenna. And Erasmus and Beza have well observed, that the future punishment of the wicked, with Satan and his angels, is popularly represented under the material fire, which the superstition of the Israelites had kindled in the Valley of Sion. It would be easy, if it were necessary, to mention other passages from the same important chapter, in which there is an anxious accommodation of the terms of the old Law to the doctrine of the new; and this, not only in cases where the two institutions are least dissimilar, but where they recede farthest from each other. But enough has been said to shew the relation so industriously maintained between them. Yet,

amid this general approach of their language and moral provisions, your Lordship asserts, that "Christ lays down his own law " without regard to the law of Moses !"

This is what I would say to you on the subject of analogy between Judaism and Christianity : and, if my method of looking at the Scripture has not misled me, the proper answer concerning the novelty of doctrine taught by the Gospel, will be this : It is a novelty, not by contradiction, but religious superiority. And what is my object in applying this deduction to the law of marriage ? It is to point out the inference to which it so fairly leads, that the liberty of remarriage follows as a correspondent consequence from the power of divorce. For what is the question between Moses and Christ ? It is not whether there shall be any power of divorce, since this is allowed by both ; but who shall have it. The Gospel does not take away the authority

itself, but limits the number of the persons acting under it, and at the same time exalts its principle. The old provisions of the law, which were of a larger indulgence, are succeeded by others of a closer obligation. But here ends the change; for the power of divorce is substantially retained; and because it is thus retained, it will have that consequence which it ever had,—the power of remarriage. Under the law of Moses, these actions were, amidst all circumstances, inseparably connected; and the law of Christ, which must be viewed as a modification, and not as an utter subversion, of it, will allow the same inference in those few to which its limited permission extends. The Saviour evidently points out this conjunction of the two actions; for, announcing his own law, he declares himself upon both of them at once. “Whosoever shall *put away his wife and shall marry another,*” ex-

cept under certain new circumstances, "is
" guilty of adultery."

A recurrence to the object of the two systems will confirm this reasoning. For what was that of the law of Moses? An amelioration of the old marriage system. And to this purpose it changed, as I have already shown, a vague and personal act into a fixed and public proceeding. What was aimed at by the corresponding part of Christ's Law? A farther amelioration of the marriage system. The license, therefore, which, from the viciousness of the former practice, Moses had been still compelled to allow, was now not utterly taken away indeed, (for we are also in our sins,) but contracted, in order to serve a greater moral purpose. But it is only contracted. The principle of the dissolution of the first marriage is still continued; and if so, the power of entering upon a second, attends it

in an equal proportion. The difference of the two laws, therefore, is not in the nature, but in the quantity, of the license granted. Under the former, it was great; by the latter, it is brought within a small compass. But, notwithstanding this restriction, the indissolubility of marriage is no more a doctrine of the Gospel than it had been of the law of Moses. With a view to the better execution of the Divine purposes on society, the power of divorce is, indeed, encumbered with greater difficulties than before, and the chance of administering to vice, through too great a facility of remarriage, is lessened; but divorce is still allowed. And, where that allowance is justly taken, the complete liberty of remarriage will follow, as a consequence, in that one case, as it did by the law of Moses, in every case. This single consideration, if there were no other, would induce me to suppose, that the clause, which you take to be entirely pro-

hibitory of the remarriage (while you admit the power of divorce), must have another meaning: for, by an analogical interpretation, the correspondence with the law of Moses, which is thus granted by yourself, in one instance, (notwithstanding your general declaration,) is maintained in the other also; and the limited power of divorce, still allowed by the Christian institution, is illustrated by an equal one of remarriage. And, what is a still farther inducement, by maintaining this correspondence, between the two institutions, we see the gracious approach they make, in common, towards the standing demands of civil legislation; the fundamental principle of which is (as the soundest lawyers inform us,) never to permit the dissolution of one marriage, without the legal prospect of another. I cannot but think this reasoning to be just. I will now leave it, and consider the subject in a point of view

which has no necessary dependence upon it. I will allow, for the sake of the discussion, that the argument of analogy would not, in itself, be a conclusive one. The mode in which I shall proceed to examine the question, will be capable of standing alone: and though its evidence may be heightened, by the previous discussion, it will be sufficiently valid, without any assistance at all from the application of it.

Upon a case which involved so much of the happiness of mankind, and necessarily excited so great a degree of anxiety in husbands and wives, concerning their relative situations, it is most reasonable to suppose, that there would be as much accuracy as possible in the terms of the Law, and that it would describe the case of both parties: and the passage before us, if not turned out of its way, but interpreted in its usual unforced manner, is as complete and satis-

factory as can be desired. It describes the married persons, under the same penalties, for the commission of an equal crime, under equal circumstances. "Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery." Here is the case of the man. "And whoso marrieth her which is put away (except for fornication,) doth commit adultery." And here is the parallel case of the woman, involved in that of him who marries her thus illegally put away.* The husband of the second wife commits adultery with her; the wife of the second husband commits adultery with him. The description is complete; and the unity of sense preserved through both situations. And let it not be supposed,

* Though the man is chiefly addressed, in both clauses, it is never to be forgotten, that the woman is comprehended in the charge; for, as Chrysostom well observes, Christ means no partiality: *Ἰσὺς ἀμετρίαν οὐκ ἔχει.*

that this double charge is superfluous: it was peculiarly necessary to add this caution concerning the woman; and Chrysostom supports me in the observation. He dwells on the danger of that self-satisfaction which the woman might feel from comparing her innocence with her ejection; and the consequent necessity of shutting other mens' doors against her, lest, on that very account, she should hasten to a second marriage.* The precept, therefore, stops her. By such marriage she will commit adultery. And why? Because the tie of the first husband still continues. But how does it continue? If she had committed fornication (a just cause of divorce,) it would have been dissolved † but it now holds; because she is

* Μη τὸ ἔλκεν ἐπὶ τὸν ἐκβάλλοντα εἶναι, ἀλλὰ καὶ τὴν ἐργάζεσθαι τὴν γυναῖκα. Vol. II. Dis. 17.

† She is still the wife of the man who put her away, says Chrysostom. The Catholics, indeed, say the same, but they do not allow divorce: Chrysostom did; and his opinion is valid. διὰ τὴν μόνον συγχωρεῖν ἐκβάλλειν αὐτήν, ἐν τῷ δὲ δέον. Ibid.

innocent of that offence which alone could liberate her, and, therefore, is still his wife. And thus is proved, from the very reason of the thing, the necessity of applying the exception of fornication to her case, which had been before expressed in that of her husband.

Besides—What is adultery? Fornication during marriage.—That a man may put away his wife, for such an offence, and marry another, is justly inferred from the words of Christ; and you allow it. What, if he does so? Can he be legally united to the second wife, and continue the unbroken tie of matrimony with the first? And if not, for it is impossible, how can she, by any remarriage, continue to commit adultery against him, who has not only ceased to be her husband, but is now the proper husband of another?

My Lord, let us clear this question from the confusion which has obscured it. That

is not adultery to God, which is not previously so to man.—I will allow Cyprian, or any other writer, zealous in the cause of chastity, to use a strong figure, and to call her an adulteress to Christ, who yet never had an husband.* But in an argument of this strict nature, it is never to be forgotten, that the very possibility of adultery is created by society, and results solely from its appointed connections. Take away these, and the very name and nature of the crime are gone. Marriage is, therefore, continually necessary to the very notion of adultery. It must be committed against that institution: for what would be nothing more than concubinage in a state of nature, or mere fornication in a single condition in society, is aggravated, and becomes adultery, in a state of matrimony. How then can the woman in question, if divorced, as you

* Non mariti, sed Christi adultera: Ep. 4.

maintain, for a legal cause, any longer commit adultery? She may be guilty of fornication, while she remains unmarried. It can be nothing more. But the passage involves her in adultery, if she marries again. And what is this but to say, in another shape, that as yet she is innocent; that, by means of that innocence, her former marriage is still undissolved; and that, as was just now argued, the same exception must be attributed to her, which was asserted of her husband?

I have endeavoured to prove, that your interpretation offends against right reason, because it supposes a perpetual adultery against a husband no longer existing. I conceive it to be equally repugnant to the rules of sound criticism. You destroy the essential relation of the propositions: you *read* the first with a restriction; you *understand* the last with none: and thus, instead of filling up the chasm with a continuity of

sense, give rise to two opposite meanings, under the limits of the same declaration. For thus you interpret: "Whosoever shall
" put away his wife, except for fornication,
" committeth adultery; and whoso marrieth
" her that is put away (on account of for-
" nication,) committeth adultery." What is there to warrant this sudden and total change of the sense? What is there to make us suppose, that an opposite meaning was intended to be thus silently brought about? My Lord, this is not usual interpretation; for a marked exception, once established, will continue its influence, unless it is done away by a subsequent declaration: unless circumstances evidently require the change; or unless a new position of the terms expressed, demands a correspondent alteration in that part which the understanding is to supply. Here, as is obvious, the continuance of the exception would make every thing plain and

consistent; yet here you are determined to drop it. And not only so, but you call in an incongruous aid from an opposite quarter; and what you should be employed in reconciling, you set at variance, by a contrariety of meaning and of consequences. See the grammatical mischief of this. The term "put away" occurs twice in this passage. By the common interpretation, it is taken in the same sense in each place, and applied to causes short of fornication. By your's, it changes its purport in the second clause, and describes a divorce, arising from fornication alone. If I complain of the alteration of one of the terms, Doddridge had before objected to that of another. This admirable man, who gratifies alternately the saint and the scholar, who fortifies the piety of his Scriptural comment with the occasional maxims of sound criticism; Doddridge, embracing that meaning of the passage which you

reject, says, "I prefer the sense here given, "because it makes this latter clause more "correspondent to the former, and prevents "the necessity of supposing the term* to "be used in two different senses so near "together."

Perhaps it will be urged, that the former part of the passage is to be understood with a reserve, because that reserve is expressed; and the second generally, because it is generally stated. I answer, that such is not the method to be used on this occasion.—You, my Lord, who can feel with so much particularity the caution necessary to be observed by a scholar, in his interpretation of Scripture; you, who can lay down rules, so numerous and exact, for the process of sacred criticism,† need not be informed by any man, of the appropriate restrictions which the mind must occa-

* *Μοιχῶν.*

† Epistle to Mr. King.

sionally allow, in consonance with the predominant demands of the question in hand. Not only will the general tendency of the argument affect the several parts which enter into its composition, and make them exclusively subservient to its own demonstration; not only will the several passages govern still more closely the meaning of the words within them, and restrain the apparent wideness which they assume; but, within the same limits, a particular and a general position will be coupled together, and the one compelled to forego the extensiveness of its own nature, and, for the sake of some specific purpose, follow the private designation pointed out by the other. I shall proceed to exemplify this maxim.

I have already mentioned the necessity of a double description, in cases where the relative duties call for a correspondent fullness of precept; and this I would call the rule of reciprocal positions. But there are

two sorts of them. I will give an instance of each. In the first, which is of the stricter kind, not only are the mutual positions fully stated, but the terms are equally given under each. Of this nature is the following passage—"If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away—And the woman which hath an husband that believeth not, if he be pleased to dwell with her, let her not leave him." 1 Cor. vii. 12, 13.

The other sort is of a less rigorous nature. But in this, too, the general positions are reciprocally stated: the deficiency is in the terms employed under them: these are mentioned with fulness, only in one part; and some of them are left to be supplied by the understanding, as a necessary correspondence, in the other. The example I will give of this second class, shall be drawn from the same St. Matthew, concerning

whose mode of writing we now dispute. It represents a moral agent placed between two objects; and states his conduct, with relation to both of them. "Whosoever will save his life," says Christ, "shall lose it: and whosoever will lose his life, *for my sake*, shall find it."—Here, with an inversion of the order of the propositions, is a passage similar, in effect, to that in question. The first proposition is general. But is it to be so understood? No: the peculiar provision of the second, affects even the former part, notwithstanding the claim arising from its position, narrows the apparent wideness of its meaning, and brings it within the reservation which itself contains, "Whosoever will save his life," (not generally, but through a particular preference of the world to me,) "shall lose it: and whosoever will lose his life *for my sake*," (through a particular preference of me to the world,) "shall save it." In this pas-

sage, on account of the position of the moral agent between the opposite objects soliciting his attachment, there is a necessary change in the terms, in order to accommodate his double choice. Yet, even thus, and with a greater appearance of force in the construction, the reservation in one part, must be allowed to operate in the other also, in a manner corresponding to the change of choice, or it cannot be understood at all. But the case is far easier in the passage immediately our own: for there, the parties remaining under the same circumstances, the exception expressed in one place is only to be supplied, word for word, in the other. "Whosoever putteth away his wife, and marrieth another, committeth adultery: and whoso marrieth her that is put away, committeth adultery." These are the general positions, of which I spoke; and they are re-

ciprocally stated. But there is not the same completeness in the terms employed under each of them. The first is attended with the particular clause, "except for fornication:" this once expressed, is dropped in the second. The mind is now prepared by the previous mention of it, and calls it in again, as a necessary and consequential part, to supply that fulness of meaning which the divine writer manifestly intended, and of which he had already given a leading indication. — If my authority will not prevail with you for this interpretation, so contrary to your own, take that of Chrysostom. He is so struck with the necessity of applying the exception to both clauses, if to either, that, in his account of the corresponding text, in Matt. v. he sometimes leaves it out altogether. He makes the two cases perfectly parallel, and proves, that, in his mind, the reservation

belonged either to the whole of the passage, or to no part of it.* If the authority of Chrysostom is disallowed, take yet a higher. St. Luke himself, who represents the Saviour pronouncing the law of marriage to the Pharisees, makes the very same statement of it. He suppresses the exception in each case, tacitly understanding it in both, and shows us that the clauses stood, both of them, on precisely the same footing. "Whosoever putteth away his wife, and marrieth another, committeth adultery: and whosoever marrieth her that is put away from her husband, committeth adultery." c. xvi. 18. If St. Luke did not afford so apt an explanation of St. Matthew, St. Matthew would sufficiently explain himself. Where the substance of this passage is first given, in his fifth chapter,

* Ο γὰρ ἀπολύων, φησί, τὴν γυναῖκα αὐτοῦ, ποιεῖ αὐτὴν μοιχεύσασθαι· καὶ ὁ γαμῶν ἀπολελυμένην, μοιχεύει. Disc. 17, vol. 2.

he appears to me to put the matter beyond all reasonable doubt. "Whosoever shall put away his wife, saving for the cause of fornication, *causeth her* to commit adultery." Here the subsequent sin of the woman, which is the point to be determined, is coupled with the previous exception, for the necessity of which I contend in the interpretation of the corresponding verse, in chapter xix. Her second marriage is here declared to be adulterous, precisely, because her first offence was not that of fornication, and her prior marriage was still good. But by your mode of argument, she is equally condemned, in situations however dissimilar. She does not commit fornication, and marries again: she is guilty of adultery. She does commit fornication, and marries again: her re-marriage is equally adulterous. My Lord, ought the same conclusion to follow from opposite premises? And, if not, is it to be denied,

that the construction which I combat is a forced interpretation of Scripture, inconsequently adapted to a preconceived opinion?

It has been my wish to make this an affair of genuine argument. I do not like captious objections to words. But it is impossible not to remark the terms in which you have expressed yourself: and, what is surprising, in a grammarian of such eminence, their continual disagreement with your own declarations. "By Christ's Law," you say, "the man who puts away his wife, *except for adultery*, and marries another, commits adultery." Good. What is next? "And he that marries her *thus put away for adultery*."—Dii Dæmone onnes! What do I read? "*thus put away!*" You mean, *not thus* put away: but put away for a reason different from that before given, namely, for adultery itself. Your reference points to nothing

similar which has preceded it; and the identity of meaning which is *thus* conveyed, turns out, indeed, to be a contrariety. Is it not obvious, that your mind relapses unawares, into the very opinion which you *thus* endeavour to refute? The terms which you employ, do but ill perform your intentions. They secretly rebel, and defeat your outward purpose; and while you labour to establish an adulterous case, they perversely fall back towards that exception of it, which your opponents are so glad to see you in any manner acknowledge.

But a more serious thing follows, which will still farther confirm this suspicion.—You wish to prove the person guilty of adultery, who marries a woman already divorced for adultery: and how do you infer it? By a counter-statement of the Mosaic Law.—“By the Law of Moses,” you say, “it was not adultery for a man

"to put away his wife for another cause than adultery, and marry another." Good. And therefore, by the restricting clause of Christ's Law, it was now declared to be adulterous. What follows? "Neither was it adultery, by the Mosaic Law, for another man to marry a woman put away." Put away for what, my Lord? Certainly not for adultery; for which, by the Mosaic Law, nobody was put away: and this you have yourself declared, in another part of your Speech.* It was, therefore, some cause short of it. And this again, which was not adultery by the Law of Moses, is, by parity of reasoning, now determined to be adultery. And thus, you see, that the exception of adultery, in the first situation of the woman, is necessary to the charge of it upon her second marriage. Your own position is proved to be erro-

* "A large power of repudiation was given to the husband for inferior offences."

neous, by the close pursuit of your own reasoning ; and the contrary of your interpretation of the Christian Law is obvious, from the adduction you have yourself made of the Law of Moses.*

One word more. You illustrate your interpretation of St. Matthew, by a passage from St. Paul. "Unto the married I command, (not I, but the Lord,) let not the wife be separated from her husband. But if she be separated, let her remain unmarried, or be reconciled to her husband."† My Lord, will this passage answer your purpose, notwithstanding the exultation which it has afforded you ? Is it not manifest, that adultery is not supposed by St. Paul ? And, if so, is it not equally manifest, that your application of it, to a case which you contend to be of an adulterous nature, cannot hold ?

* Bishop of Rochester's Speech, p. 17.

† 1 Cor. vii. 10, 11.

By the Law of Christ, the husband might marry again after his divorce of the first wife for her adultery. By the passage of the Apostle, he is supposed to remain for ever free from such remarriage; for, otherwise, the woman could not, after absence, be ordered to return to him. The separation, therefore, was begun on the part of the woman, for offences short of adultery. And in all such cases, she is properly commanded to be temperate in her conduct: if she will not live with him, at all events, she must remain unmarried to any other; otherwise she commits adultery against a previous contract, not dissolved by the terms of the Christian Law: but, if possible, on account of the promotion of the faith which they both profess, it is better for her to be reconciled, and return to her husband. This reasoning is made conclusive by the latter part of the passage, which (from inadvertence, no doubt,) you have

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omitted: "And let not the husband put away his wife." Nothing can go beyond this proof. By the Law of Christ, the husband might put away his wife. The Apostle, we may be sure, did not mean to contradict him: yet he bids the husband not dismiss her. And what does this show, but that he is not speaking of adultery—that we must apply the restraining principle, already insisted upon—deprive the words of their apparent latitude of meaning, and give the passage that appropriate interpretation which the reasoning of the Apostle so evidently demands?

Besides, to whom does the Apostle address himself? To Gentiles; whose Laws of Divorce were different from those of the Jews, and whose practice under them was, perhaps, still more licentious. Though a Jewish woman should separate herself from her husband, she could not marry again. The dismissal of her, by the husband, was

absolutely necessary to her fulness of liberty. And this is expressly told us by Josephus.* Among the Gentiles, the facility, allowed by the Laws, was equal to both parties, and ample use was made of it. The man *sent away* the woman for slight offences, and the woman *separated herself* from the man;† and both married again at their pleasure.

* Salome divorced Costobarus, ἡ κατὰ τοὺς Ἰουδαίους νόμους, ἀνδρὶ μὲν γὰρ ἔστρεψεν ἡμῖν τούτο ποιεῖν (send a bill of divorcement) γυναὶ δὲ δὲ διαχωρισθεῖσα καὶ αὐτὴν γαμήθηται, μὴ τὸ πρότερον ἀνδρὶ ἀφέντος. Antiq. Jud. Lib. xv. C. 7. Gelenius interprets, that the consent of the husband is necessary to the remarriage of the woman whom he has divorced. For this he has been justly blamed by Selden and others.

† This difference in the terms, usually employed for their respective proceedings, did not preclude the woman from sending, on her part, a bill of divorcement to the man. Justin Martyr, in the miserable case which he has so feelingly described, but which I am unwilling to repeat, couples the term of separation with the libel of divorce, issued by the offended wife.—Plutarch says, that, by the Law of Athens, the wife presented her bill to the magistrate, and summoned the husband before him. In Vit. Alcib. Perhaps the Law was similar at Corinth; the

It appears, then, that the charge of St. Paul to the woman, was directed against her rash abandonment of the husband for trivial causes, and her spontaneous remarriage.* But what is the case of the woman, described by the Saviour? She is forcibly ejected from the house by the husband; and, as you contend, too, on account of her adultery. Where is the parallel? You try unequal propositions by each other; you attempt to prove an adulterous case by one that is not so; and you apply a general laxity of custom to the illustration of a peculiarity of precept.—The consequence is in this, as it must be in all such cases, you produce no conviction.

converts of which place, St. Paul was labouring to reclaim from all the laxities of Paganism.

* "If she withdraw from her husband by her own rash and foolish act," &c. This is the paraphrase of Doddridge. And "let not the husband dismiss his wife, on any light account, or, indeed, for any thing short of adultery."

But farther. Having reasoned in the absolute and exclusive manner which I have just pointed out, you suddenly stop, to allow an opening for one half of the doctrine of the Reformation. In the case of Lord Northampton, you applaud the remarriage of the *innocent* party.* But is it not obvious, that, if you are correct in representing the sense of the Apostle, neither of the parties is at any time competent to a second marriage, during their joint lives? for the prohibition is mutual and general. You make it absolute against the woman, by that part of it which you have quoted; and I, by adding what you have omitted, equally prove the necessity of the same construction in the case of the man. And this is the Catholic sense of it, and the very doctrine of the Council of Trent. They strenuously maintain, and Bellarmine argues in the same manner, that the passage

* Bishop of Rochester's Speech, p. 12.

is conclusive against both parties, for ever, and in spite of all reasons of divorce. And this they connect with the original marriage: they illustrate the one case by the other,—urge the perfect renewal of the first institution, by the Law of Christ, with all its incapacity of dissolution, and prove their assertion by the very passage of St. Paul which you have adduced. There may be consistent errors: and this of the Catholics is one of them. We trace them in it, from Paradise to the town of Trent. But of your opinion,* I hardly know what to say. Homer tells us, of Diomedes, that, at times, a spectator could scarcely determine on which side he fought. Now he was

* It is but a small number of Protestants which has, at any time, maintained this opinion. Of the Church of England there have been very few indeed.—The late debate proved, that the Bishops did not agree with the learned Prelate on this point. The permission which one of the speakers from the Bench was willing to grant to the adulteress of intermarrying with any other than her seducer, destroys, of itself, the opinion here combated.

seen with his own Greeks, and now he was lost for a while in the throng of the Trojans.* Diomedes was a fervent warrior. And you, my Lord, in the zeal of argument, are seen to mingle with the teachers of both Churches, by turns. You borrow a little liberty from Christ's Law, and allow the remarriage of one of the parties: and thus far you reason with Protestants. Presently, you adduce a broad argument from St. Paul, which, if fully interpreted in the sense you give to a part of it, comprehends both the man and the woman in its total prohibition. And here you agree with the Catholic doctors. You insist on the Christian renewal of the marriage in Paradise, which you state to have been indissoluble;†

* Τυδείδην δ' ἐκ ἀν γυναικὸς ποτὲ ποισι μετῆλθε.

Ἡ δὲ μετὰ Τρώεσσιν ὁμιλοῖ, ἢ μετ' Ἀχαιοῖς;

Θύνη γὰρ, &c.

Il. Lib. v. V. 85.

† I understand Athanasius as interpreting the original Law of Marriage, "they two shall be one flesh," against polygamy only. It is true, the question to be answered,

yet you break it, on one side, for the sake of Lord Northampton. And you prove, that the offending woman cannot re-marry after divorce, by the same Law from which it is equally concluded that she is incapable of all divorce!—But either the marriage binds the husband and wife by a common tie, which cannot be broken, but by death, or the capacity of divorce, which the Saviour still allows, will give liberty to both. And, for seeing this doctrine with the steady eye of a Christian Reformer, and

went to that point. But, on other occasions, he has no objection to widen his responses, for the sake of Scriptural illustration: indeed, he does it in this very case. *Quest. ad Ant. 97.* The Catholics add the prohibition of divorce, which they also attach to the Christian Law. The Protestants must understand the latter with one reservation.—When Whitby gave that construction of divorce, which has been noticed, p. 26. he did so, in order to prove that the primitive institution of marriage was renewed by it. This shows the difficulty in the notion so commonly received, since he was obliged to invent a wrong hypothesis, in order to get rid of it.

teaching it boldly against the thunder of Popery, you unchain your censure, and set it at the memory of the venerable Cranmer; and, by an unhappiness of language, which we cannot sufficiently lament, throw upon him the odium of that very name, the application of which, to yourself, you so properly disdain. "He reasoned more like a *monk* than a senator."*

But, my Lord, you will have to make your peace with others besides Cranmer. Are you aware, that, in the fervour of dispute, you equally encounter your friends and your enemies? Do you not see, that you heap the same ignominious term on the original mover of the late Bill, to whose assistance, notwithstanding, in his correction of our depravity, you so readily came from your "*Cumæ*?"—With a rectitude of intention, which would not blind itself, in

* Bishop of Rochester's Speech, p. 12.

order to favour the point in dispute, and with a proper openness, which led him fairly to express what he could not but see; he has confessed, that he is unable to conceive how a divorce can take place on one side only! Here is more *monkish* reasoning: and, in this part of your argument, you throw upon the person who uttered it, that very opprobrium from which you so zealously defended him in another. But whatever be your censure of Cranmer, I will be a monk with him, and believe, that, by the Law of Christ, a marriage once dissolved, sets both parties at liberty. Whatever may be your inadvertent hostility against your fellow-labourer, I believe with him, too, that, by the Law of Parliament, divorce bills effect a "complete dissolution of marriage;"* and by consequence, that the

* Lord Auckland's Speech, p. 20.—The difficulty raised by the wording of divorce bills is, as I conceive, no difficulty at all. The injured husband makes his

re-marriage of each party is good, upon legal principles also, without the help of any of that "connivance" which you would call in, for the merciful purpose of covering the inherent defects of such contracts.—But, my Lord, the mercy which you superfluously show, in one instance, to persons thus circumstanced, you most terribly deny them in another. You seem to think you have been amply kind, in allowing past marriages, of this nature, to be made lawful; and that only those which shall be contracted hereafter, shall not be so.*—But what? Is it enough that the

specific complaint to Parliament, and a specific redress is issued in his liberty of remarriage. Parliament, I believe, does not pronounce beyond the case in hand; and hence the silence concerning the woman, which has been understood as a prohibition. But is it not obvious, that her liberty is complete, notwithstanding the silence? His divorce is plenary; and though nothing is said of her's, it is left to follow the other, as a necessary consequence.

* Bishop of Rochester's Speech, p. 12—18.

estates of the parties shall descend to their children, as if legitimately born? And is it not obvious, that, if your doctrine be true, the parents must instantly separate, notwithstanding your destructive offer of keeping them together? Or, do you mean to inform them, in that miserable consolation, that what is made valid in law, has an equal force in conscience? No; all such persons, whatever pardon may be extended by Heaven to their past sin, the sin of an adulterous marriage contracted in ignorance, must live no longer in that fatal union. And, with the sentiments you profess, this ought, under all circumstances, to be your uniform language to them. Every such husband and wife must cease to be such; and the common care of their families must be abandoned, on pain of the eternal torments, which you denounce against their continued and indefeasible adultery. I am persuaded, that, if the

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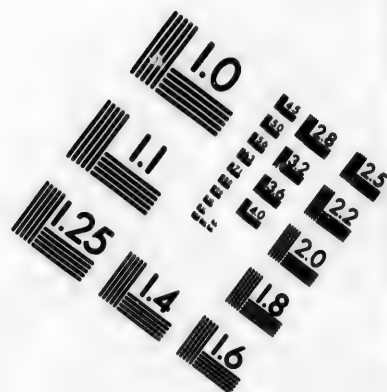
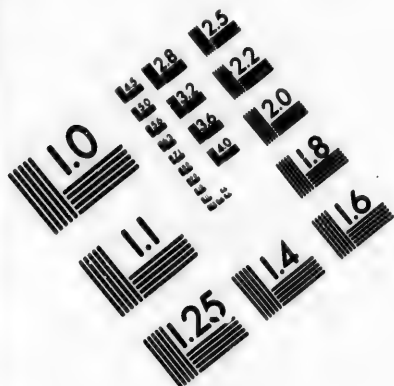
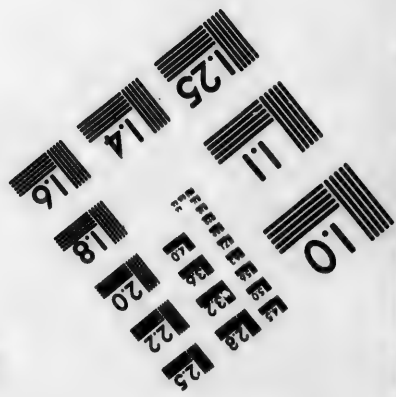
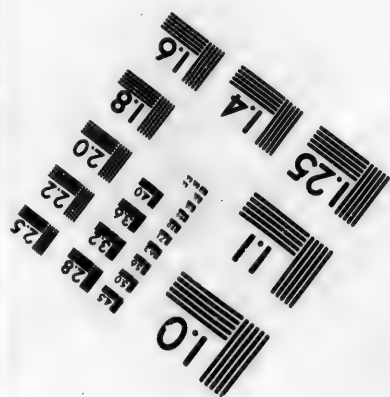
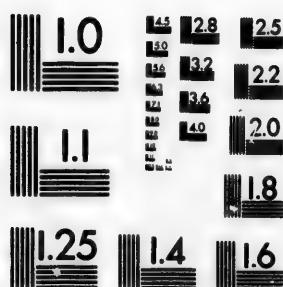


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word of God carries this meaning with it, no human inconveniences ought to stand, for a moment, against its sovereign authority. Let God speak, and "let the earth keep silence before him." But what I have to notice, in addition to the vehemence of your interpretation, is the sudden contradiction of your own principles, in the satisfaction you so preposterously offer to the unhappy persons. You bid them be of good cheer; for their marriages will be made valid through a protecting Law!—But what of the Divine Law?—Whatever the Law of England may determine, all the terror of the Law of Heaven, if your interpretation of it is right, remains in force against their actual situation. Yet, strange inconsistency! this very situation you propose to legalise by statute; though the continuance of such an union is, upon your own declaration, necessarily productive of sin, and will infallibly damn

the parties that remain in it! You deliberately connive at the offence which you so vehemently condemn, and the heinousness of which, you yourself declare, no connivance can cover: and you scruple not to apply the sanction of public authority to that cohabitation, which, in spite of all human permission, you yet declare to be "gross adultery," in the eye of Heaven.* You favour the right of estates, and only promote the forfeiture of conscience; you triumphantly protect the descent of titles, and only involve the souls of the present possessors in everlasting perdition. This is dreadful tenderness, my Lord! But Solomon, I think, had long since talked of "tender mercies" which were "cruel." Nor will it be very difficult to guess the feelings of those against whom you point your relief. Their temporal good might be somewhat

* Bishop of Rochester's Speech, p. 18

obliged to you, if it were in need of your legislative protection: their future welfare is a wretched sufferer from the partiality of your doctrine.*

* It is in vain to argue, as the learned Prelate does, from the Mosaic permission of practices, inconsistent with the original institution of marriage, to the gross and abominable offences which he would himself legalise by statute. The Deity surely may enforce, or remit, something of his own institutions, and the penalties belonging to them, as his government of mankind, under different circumstances, and in distant ages, may require: but we have no power of alteration; and, having once discovered the will of Heaven, under the system in which it has placed us, we must abide by it, and our innocence or our guilt is fixed.—Besides, the learned Prelate well knows, how strong has been the doubt concerning the sinfulness, imputed by some, to certain practices, tolerated by the Mosaic Law. Men of the greatest name have shrunk from the idea, that any moral turpitude could be inherent in these cases; and those who have gone so far as to admit the possibility of it, with what caution have they not expressed themselves! The judicious Bull scrupulously says of the very things in question, that they were barely, if at all, free from the nature of sin. *Vix, ac ne vix quidem, a peccato excusari poterant.* Harm. Apost. Diss. Post. c. 7, 8. But what is the language of the Bishop of Rochester? Legalise the present marriages of adulteresses with their seducers. And

This seems to me tolerably convincing: yet as if, in the common path of criticism, every other person "ran uncertainly,"—as if, in the warfare of literature, we did nothing but "beat the air in vain," you wind up the whole of your argument with the assertion, that your exposition is the "only one which the words of Christ can bear!"* —My Lord, this is a very positive and sweeping declaration; and I have been but ill employed, if I have not shown, by this time, that the "words of Christ" are capable of another and a better sense; that they are to be interpreted, as Eusebius, as Chrysostom, and so many other great names instruct me, on that principle of respect

what is the nature of these connections? They are, "gross adulteries!" "flagrant adulteries!" nay, "adulteries," as he says, "of the most heinous kind!" Yet, amidst all this, he scruples not to say, that the Mosaic Law "went even farther" than he does!—What an opinion of a Divine revelation!

* Bishop of Rochester's Speech, p. 17.

and analogy, which approximates the Law of Moses to that of Christ, and places the two institutions, not in the attitude of a mutual defiance, but under the friendly bonds of an intimate and necessary relation. Lest this should not suffice, I have called the passage to an examination on its own merits; I have tried it by the standard of reason, by the rules of criticism, by the usual mode of Scriptural construction, and, finally, by the train of argument adopted by yourself. Need I say more? I will only add two or three interpretations of the passage, as they happen to occur. The first is the paraphrase of it, by the excellent Benson.* "Whosoever shall put away his wife, except it be for adultery; and, after such unlawful divorce, shall marry again, he shall be guilty of adultery: and whosoever shall marry the woman

* Life of Christ.

“ that is *unlawfully divorced*, shall also be
“ guilty of adultery; because the marriage
“ bond is not dissolved, and she is, legally,
“ still the wife of her former husband.”

This seems very reasonable: yet your exposition is the “ only one the words of
“ Christ can bear !”—Hear next the learned and acute Dr. Clarke, who had no temptation to warp his great sagacity on this point. “ Whosoever shall put away his
“ wife, and marry another, except only
“ when it be for the case of adultery that
“ the first is put away, shall be accounted
“ guilty of causing both *her and him* that
“ shall afterwards marry her, to commit
“ adultery.” Still your Lordship’s exposition is the “ only one which the words of
“ Christ can bear !”—Finally; hear the paraphrase which the accomplished Le Clerc has given of the “ words of Christ.” Itaque nunc pronuncio, quicunque usi fuerint eâ licentiâ, quæ inter vos adeo usitata est, di-

miserintque uxorem leviori de causâ quam propter adulterium, et sibi alteras nuptias contrahere licere crediderint; eos, aliâ domum ductâ, dum vivant uxores, a quibus nec sunt nec possunt esse sejuncti, fore reos adulterii: eumque *pariter*, qui dimissam mulierem, quæ viri alius uxor est, duxerit, adulterum futurum.

Here I close my reasoning with you, my Lord, and return to the general business of this Address. I only beg to assure you, first, of the high opinion I have long entertained of the general powers of your mind, and the extent of your scholastic acquirements. It is only on some mistaken or unguarded point, that you give to lesser men the opportunity of contending with success against you. And, I say it without the smallest affectation, the present question I regard as one of these. Had you considered it as calmly as I have endeavoured to do, we should, perhaps, have received from your

hands an exposition, somewhat different from "the only one which the words of Christ can bear." I should have had the pleasure of seeing my opinion illustrated, by you, with a variety of literature which I have not yet attained, and enforced by a power of reasoning beyond my own.

"How hadst thou blest mankind, and rescued me!"

And now, my Lords and Gentlemen, you have heard the disputation concerning the adultery imputed to the marriage of the divorced woman. I am happy in being enabled to throw off the air of controversy from what remains of this question. A curiosity will naturally arise concerning the origin of the opinion here combated. I will endeavour to gratify it, connecting the opinion with the doctrine of marriage from the Apostolical times.

The first ages of Christianity were marked with an uncommon severity on the subject of marriage. And there were many reasons

which conspired to produce it. The outward circumstances of the Church were one powerful cause; and St. Paul, himself, argues strongly from the dangers and persecutions to which the converts were subject, in order to dissuade from marriage all those who could possibly contain. 1 Cor. vii. 26. Another cause was the erroneous or premature interpretation which some affixed to the declarations of certain of the Apostles, "that the time was short," and "the end of all things was at hand."* THEY would not be eager to engage themselves in worldly connections, who were in constant expectation of that last hour which should dissolve every earthly tie. The old writers supply still another cause: the mixture with Gentile families might violate the purity of Christianity, or tend to throw the

* Tertullian was so full of this notion, that on one occasion he called the last day, *diem expeditionis*. *Ad. Uxor.* l. iv. He makes it serve also for readiness of obedience to the expected summons.

married believer back again to the pollutions of Paganism.* With such impressions as these on their minds, there were some who forbade all marriage as profane. St. Paul foretells this heresy which soon sprung up. 1 Tim. iv. 3. They were commonly known by the name of "Marcionites;"† and by a figure drawn from that part of our Saviour's discourse, in which some were said to have made themselves "Eunuchs" for the Kingdom of Heaven, were also called "Spadones."‡ St.

* It was from the predominance of this fear, together with the remembrance of the Jewish practice, that the first converts to Christianity looked upon their marriages as actually dissolved, if one of the parties still remained in infidelity. St. Paul gave some directions which went to check these precipitate divorces.

† Iræn. Adv. Hær. Lib. i. 30, 31. Dodwell says, that Tatian and the Encratitæ held this opinion before Saturninus and Marcion. Dissert. Cyp. 3.

‡ I am unwilling to mention some of the arguments used against marriage, after St. Paul's time. But if any reader will look into Greg. Naz. vol. II. in Laud. Virg. he will meet with some *uncommon* reasoning about it.—It is, indeed, poetical reasoning, and may, therefore, admit of some excuse.

Matt. xix. 12. A sect which made far more noise than the former, was that of the Monogamists, known, also, by the name of Novatians and Montanists; and their great tenet, as pronounced by him who has supported it, with equal vehemence and want of his better judgment, was, one God and one marriage.* With them, the question was not concerning the legality of marrying again after divorce, but of marrying at all after the death of either party. St. Paul had given particular directions to the Bishops and others of the Church, that each of them should be the "husband of one wife."† The peculiarity of the Mo-

* *Novimus unum matrimonium, sicut unum Deum.*
Tertullian de Monog.

† It has been supposed by some serious people (for with the ribaldry of Madan I have nothing to do) that this was only a prohibition of marriages, contracted with others upon divorce; and that second marriages, after the death of the first wife, were open to the Clergy as well as to others. Yet the Apostolical constitutions expressly

noganiists consisted in extending this precept to themselves. They saw the force of the Apostle's argument to the Clergy. They had nothing to do but to prove that they were on the same footing, all of them an "holy people unto the Lord:" and this being done, the prohibition against every second marriage, followed as a necessary consequence. On this point Tertullian has

declare themselves on the single marriages of the Clergy, whether their wives lived or died; *καὶ ζῶσιν, καὶ τεθνήσκουσιν*. Lib. vi. c. 17. And we find the custom was, not to admit to a bishopric him who, on examination, proved to be in a second marriage. Origen. Homil. 17. And instances sometimes occurred of those who wished to decline bishoprics: who pleaded their second marriages, and were excused on that account. It will be observed, however, that I am speaking of the *history* of this opinion. Doubtless the circumstances of the church had an influence on this part of the doctrine of marriage, as well as on others; and an extraordinary restraint might be necessary in the infancy of Christianity, which may be waved, with a sufficient preservation of conscience, in the more mature and settled state of it. However, St. Paul's precept must never be forgotten, whatever is done, must be "in the Lord."

a world of strange reasoning. He makes great use of the original marriage in Paradise, pleads not its absolute indissolubility, but its eternal obligation :* and insists much on the *one* rib singled out from the many Adam carried about him, and which might have been taken for the making of more wives, if more had been allowable, &c. If their opponents objected to the novelty of their doctrines, they dwelt on the communications of the Paraclete, and his inspirations, subsidiary to the Gospel. On account of this holy connection, they, also, called themselves Spiritualists. Another of their names is derived by Jerom from "*munditiæ*," the superior purity they affected.

The Orthodox of those ages, who, by the

* *Semel hoc factum et pronunciatum, sicut ab initio, ita et nunc in aliam carnem convenire non potest, ibid.* And, again, *Plures costæ in Adam, et manus infatigabiles in Deo. Exhort. ad Cast.*

dition to these was plainly indicative of gross and uncontrollable licentiousness. Gregory Nazianzen, into whose thirty-first oration I am sure our learned Prelate had been looking, before he went to Parliament with his speech on the bill for the prevention of adultery; Gregory, I say, had called the man of four wives, no longer a man, but, indeed, in the Bishop's own phrase, a "downright hog."* The children of such marriages were declared bastards. But some mitigation was at length applied by the Roman penitential, which ordered a fasting of three weeks for a third

* Here is Gregory's scale of marriages, τὸ πρῶτον νόμος, τὸ δεύτερον συγχώρησις, τὸ τρίτον παρανομία. Ὁ δὲ ὑπὲρ τούτου, ΧΟΙΡΩΔΗΣ. How truly beautiful is the description, given by Eusebius, of the adulterers of Paganism! Χαμαὶ τε καὶ ἐπὶ γαστέρα πεισόντες, ὡς θεῶ τῇ "Ἦδον ἢ προσκύνησαν" πηγνύς τε σφᾶς αὐτοὺς ἐγκτεαν δίκην καταβαλόντες, &c. Prep. Ev. lib. vii. c. 2. This is fine writing. The reader is made to feel in the same moment admiration of the imagery, and contempt of the vile object which it so loftily exposes.

wife, and twenty-one for a fourth: after which, all was well again. But enough of this. I will now add to this primitive history, what I promised on the disputed point of adultery, imputable to the second marriage of the divorced parties; and will endeavour to find out whence it came.

A little after St. Paul had addressed his epistle to the Romans, or, at the latest, ere the persecution of the Christians had taken place in the age of Domitian, and when the canon of Scripture was not yet closed, Hermas is supposed to have written his celebrated book called "Pastor."* Of this

* It has been disputed, in what manner Hermas's book was received in the early Church. It seems to have been regarded only as Ecclesiastical. It was not admitted into the Canon, and was read, perhaps, as one of our articles says of similar books, among ourselves, "for example of life, and instruction of manners."—There is, however, a considerable difference in the merit of the several parts of it. The "Mandates," have much excellence. The "Visions," are not to be compared with those sublime ones which St. John after-

work, and some others of the apostolical fathers, there was an English translation, made somewhat less than a century ago. The then learned and excellent Bishop of Lincoln, the accomplished Dr. Wake, gratified the world with this version, and accompanied it with a concise but comprehensive dissertation on the character of the writings it contained. In the fourth mandate given to Hermas by the supposed angel, who has assumed the habit of a "Shepherd," there is an express opinion, involving the point which has been just disputed; and it is remarkable for the severity of its doctrine on the adulterous nature of all re-marriage, during the life of both parties. "I said unto him," (it is Hermas

wards saw, and divinely recorded, in the book of Revelations. However, such as their merit may be, the "Similitudes," are still far beneath them. In the plan of his imaginary conversations, and the profusion of his Christian imagery, Hermas reminds me, alternately, of Boethius and Bunyan.

who informs the reader what discourse he addressed to the angel shepherd,) “suffer me to speak a little to you: he bade me say on; and, I answered, sir, if a man shall have a wife that is faithful in the Lord,” (a Christian,) “and shall catch her in adultery; doth a man sin that continues to live still with her? And he said unto me; as long as he is ignorant of her sin, he commits no fault in living with her. But, if a man shall know his wife to have offended, and she shall not repent of her sin, but go on still in her *fornication*,* and a man shall continue, nevertheless, to live with her, he shall become guilty of her sin, and partake with her in her *adultery*. And, I said unto him, what, therefore, is to be done, if the woman continues on in her sin?

* See p. 30. for adultery involved in fornication. It was upon this point, that the Monogamists allowed repudiation, though no re-marriage.

“ He answered, let her husband put her away, and let him continue by himself. “ But if he shall put away his wife, and “ marry another, *he also doth commit adultery.*”—This passage is remarkable for the open and unqualified manner in which it asserts an adultery resulting from the re-marriage of the innocent, as well as the guilty party.* Nor can it be compared with other reasonings attending it, in order to show, as in the doctrine of St. Paul, a latent conformity to the real decision of the Saviour. It stands alone, and narrows the permission both of him and his Apostles. Doubtless, the opinion proceeded, as some

* The reason given for the necessity of this forbearance, on the part of the husband, is the chance of repentance in the wife, who may return to him, and whom he is ordered to receive. The peculiarity of the doctrine was this: if she frequently relapsed, he might refuse to take her again; *servis enim Dei, says Hermas, pœnitentia una est.* Still he could not re-marry, without committing adultery, during her life.

other erroneous ones of his, from an excess of virtue in the writer. But, as it is, I regard it as the origin and fountain of all that persuasion concerning the utter indissolubility of marriage, which was afterwards so zealously espoused by the Latins,* which the Greeks and Armenians refused to receive; and which, with a few temporary changes,† lay floating in the Western Church, till the improvident orthodoxy of the Council of Trent fixed it for ever on the ac-

* There seems to have been a Latin version of *Hermas*, in the earliest age of the Church: whether it were the same we now have, is somewhat doubtful. But the book soon acquired a great authority with the Latin Ecclesiastics, who employed it in the dispute with *Montanus*, *ad jugulandam Montani impietatem*, *Cot. Jud. de Her. Pas.*—*Hermas* allowed re-marriage, after the death of one of the parties. This grievously offended the *Mogamists*, who, indeed, show him no mercy.

† One of these was the invention of the person, known in the Church by the name of *Ambrosiaster*, who did not allow the woman that privilege of remarriage which, under equal circumstances, he gave to the man, *quia mulier inferior est, vir autem potior et caput mulieris.*—*Ibid.*

ceptance of the Catholic believer. Whoever wishes to see the descent of this opinion, to which the Catholic commentators "cling adhesive," may consult the long and learned note of Cotelierius, in his edition of the Apostolical Fathers. He, himself, calls the decision of Hermas "sententiam orthodoxam," and gives that correspondent decision of the Council of Trent, which I shall transcribe. "Si quis dixerit Ecclesiam errare, cum docuit et docet, juxta Evangelicam et Apostolicam doctrinam, propter adulterium alterius conjugum, matrimonii vinculum non posse dissolvi, et utrumque, vel etiam innocentem, qui causam adulterio non dedit, posse, altero conjuge vivente, aliud matrimonium contrahere: mœcharique eum qui dimissâ adulterâ aliam duxerit, et eam quæ dimisso adultero alii nupserit; anathema sit." But Cotelierius has not told us how the terms of this decision were altered, to

serve an urgent convenience.—Soave* shall tell it for him. The Venetian subjects of the Greek isles, whose doctrine and practice were contrary to the impending decision, made a hasty and earnest remonstrance against it, through the ambassador of the Republic, at Trent.† The Anathema had, at first, been directed against all who allowed the dissolution of marriage for adultery, and the liberty of second nuptials after divorce. And of this description were the terrified remonstrants. For their satisfaction, therefore, and partly too upon the credit of St. Ambrose, the curse was thrown into a new shape. It no longer condemned those who affirmed this doctrine; but, as we see, it only devoted to

* The name assumed by Fra. Paolo.

† In this remonstrance they state the immemorial practice of their people.—*Li quali da antichissimo tempo costumano di ripudiar la moglie fornicaria, e pigliarne un' altra.* They add, too, that no Council had ever told them they were wrong. Concil. di Trento, lib. viii.

destruction all who held, that the Church was wrong in teaching the contrary ! And thus, the sentence, which would have openly involved the whole Eastern Church in its malediction, suddenly veered about ; and, by a dexterous change of terms, though with no change at all of the sense, fell, in appearance, upon the Protestants only. With this ingenious accommodation, the Doctors were, in general, mightily satisfied.* What is more strange, the Greeks were satisfied too ! I will only farther observe of this Council, that its deliberations took place, at a time when the state of the

* Some of them, however, were not. They could not conceive the difference of these propositions, substantially considered. On other occasions too, there were many and strong objections made to the resolutions about to be taken. The deliberations were, indeed, remarkably free ; and if a discreet divine will carefully read the whole of this history, he will find, in the debates of the Council, a number of those arguments, on which the Protestant Church so triumphantly stands against the doctrines of Rome ; and, on some of the disputed points, learn to give them a new and peculiar force.

world, both in its temporal and spiritual concerns, was very unfavorable to a dispassionate examination of the subjects to be laid before it. The interests of the Christian Princes were much divided as to the convening of any assembly. New principles too, variously hostile to the doctrine and pretensions of Rome, were fast gaining ground,* and left it this alternative, either to take away some of that offensive opinion, which had grown up in the Church, through the gradual influence of ignorance and superstition, and which, not being yet sanctioned by any general authority, might have been prudentially dropt; or, with the high hand of spiritual power, to protect all its extravagancies, and give it a broad and conclusive sanction. The latter method was

* In one of the orations of the French Deputies to the Council, fifty years are assigned for the age of the new doctrines. "Ecclesiam Dei, per hosce quinquaginta annos, tot in eam invectis opinionibus sauciam," &c. *Memoires pour le Concile de Trent.*

adopted. The supremacy of such a decision was blindly supposed to be capable of quelling all private objections.* In conformity with this resolution, all scattered errors were compelled to come together; all vagrant absurdities were laid hold of, and made for ever stationary.

————— Fix'd as firm
As Delos floating once. —————

* If not, there was a remedy. By the Bull of Confirmation, all persons were prohibited from writing or speaking against the decisions of the Council. What appears strange, they were equally prohibited from confirming it by decrees, &c. But, according to the principles of Rome, the doctrine could receive no accession of authority from any other power. Their own sanction was supreme and final. If any interpretation was wanted, nobody was at liberty to make it. For the solution of all doubts, application was to be made to Rome, which ought alone to declare its own meaning, "Essendovi biosgno d' interpretazione d' alcun luogo oscuro, o di qualche decisione, andassero alla sede Apostolica." Lib. viii. Con. Tr. In spite of the unanimity, so fondly hoped for, great differences were occasioned, not only in the world at large, but among the Doctors themselves. Soave, not unhappily, calls the whole affair, the "modern Iliad." *L' Iliade del secol nostro.*

By a new effort of "art *Pontifical*," and "wondrous," that enormous bridge of doctrine was reared, which, stretching, "with passage broad," through the intermediate ages, accommodated the carriers of all superstitions, in their way to Trent; and, Hermas at one end of it, and Pius IV. at the other, connected the primæval error of Christianity, with a corrupt hierarchy of the sixteenth century! Then, for the first time, was tradition declared to be equal, in value and obligation, with the written word of God. Then, for the first time, were the Sacraments ordered, by the same ecumenical judgment, to be held in that number, (neither more nor less,) which dark opinion had from time to time invented.* Then,

* The Council of Florence had not been thus precise. The peculiarity of that of Trent, was in fixing the number at seven, neither more nor less. And, here, the Lutherans were aimed at in the lesser number, and the

too, was the tyrannical decision made on the subject before us; a decision, which, while it declares its conformity with the doctrine of the Evangelists and Apostles, perverts it all; abridges of their power the express exceptions of the Saviour; or, by insisting on the broad meaning of St. Paul's precept, instead of accommodating it to the predominant demands of Christ's own decision, builds up, at all hazards, an exaggerated persuasion, and, preposterously, places the servant above his Lord.

Such is the argument I have taken the liberty to offer to Parliament, on the much contested question of divorce and remarriage. Having done this, I should close my

too scrupulous readers of Augustin, &c. in the greater. Some of the Fathers had used the word with great latitude. Bernard and Cyprian apply the sacramental term to the "Lavipedium" itself, to which, indeed, the Church of Rome pays much honour, though it does not regard it as a Sacrament.

Address. But I will beg your indulgence, while I add a few considerations on the nature of the penalties, which have hitherto attached to the crime of adultery; and urge the necessity of remedying the present deficiency of them.

There are some among us, it seems, to whom the preservation of the old forms of justice is dearer than the effectual guardianship of virtue, through laws which have the guilt of novelty. There are others, who, from the manner in which adultery is at present punished, have hastily supposed that it has been, at all times, treated as a mere private offence. And both these arguments were heard in the late debates in either House. I am no lawyer. I can only exert somewhat of common sense on common history. And, from this, I also gather, that the punishment of this offence has been generally, if not always, of a public nature among us.

Before we were able to make good laws for ourselves, we received them from the Romans :—and what was their treatment of adultery ? Valerius Maximus loves to dwell on the ancient virtues of his nation. He informs us, that Rome had subsisted five or six hundred years without a divorce :* adultery, therefore, must be supposed to have been rare. But Rome was fated to an extension, equally rapid, of dominion and profligacy. By Augustus, this offence

* Tertullian, who sometimes upbraids his Christians with the virtue of the Pagans, says, it was full six hundred years. Montesquieu indeed, feels himself inclined to dispute the fact ; or, at all events, to account for it, through some other cause than the mere force of virtue. The Law of the Twelve Tables enlarged the power of divorce, originally granted by Romulus ; and whoever took advantage of the licence they gave, forfeited a certain sum to the wife, and as much to the Gods. Hence the infrequency of divorce. *Esprit des Loix*. Liv. xvi. c. 16. But the point before us cannot be thus explained. Adultery was one of the three causes of divorce, allowed by Romulus ; and to obtain it, on that ground, no fine was necessary.

began to be followed with banishment, and sometimes with death. And after an interval of impunity, Domitian felt such unaccountable compunction, for the cause of suffering virtue, that he thought no vengeance too great to be inflicted on the violators of it.* From this time, we hear little of the punishment of adultery, till the age of Constantine; but, from the Christian writers, a great deal, indeed, of the frequency of the crime. When, at length, the Gospel was connected with the throne, death became again the penalty, but upon a different principle. There was a great influence of Judaism on the early ages of Christianity; and, in the new settlement of the morals of the Empire, the professors of the faith looked earnestly into the ancient

* Perhaps he meant no more than to make his adopted virtue subservient to his inbred cruelty. Nothing impure could have expected punishment from such hands. The offenders were more easily discovered on that account, and many were cut off.

part of Scripture, where imperial holiness had already prescribed the social duties of a nation, and the penalties due to the violation of them. But, however inapplicable the principle of the Theocracy might be to common governments, adultery was once more declared capital. This was confirmed by Constans, as we see in Theodosius, who ordered the offenders to be "drowned in sacks, or burnt."* However, it was not fully executed by Justinian; with whose legislation, indeed, I am not now concerned, as it did not enter into our national affairs,

* *Insuere culleo vivos, vel exurere.* Lib. ii. The former had been the punishment, only, of parricides. We find, from Jerom, that death was inflicted, in his time, on the adulterer. His commentator remarks this, for the sake of throwing in an observation on his own times:—*Palam apparet, says he, adhuc ætate Divi Hieronymi adulterium capite solere puniri: nunc magnatū lusus est.* The Euxine is destined, at this time, to punish infidelity of a less kind, in the same manner. The Circassian females, who have incurred the displeasure of the Seraglio, are taken out, in boats, by night, and drowned in sacks.

till we had long since received the principles of Law from other quarters. What I would observe, from this statement, is, that the punishment of the violation of marriage, by the Roman Laws, whether Pagan or Christian,* was of a public nature: and such, doubtless, were they among ourselves, as long as the Romans remained with us, and in whatever extent they had power to apply them: nor was the authority of the Civil Law an unimportant one, in our early history; it lasted from Claudius to Honorius,—somewhat above three centuries and an half.

As to what our native savages thought of this matter, it is useless to inquire. The

* After the invasion of the Empire, it was, for a time, the same. Cassiodorus gives us the formulæ, employed by the Barbarick Sovereigns, in granting dispensations for marriages, within the prohibited degrees.—If the sanctions of marriage were in their hands, the punishment of the violation of it may well be supposed to be there too.

Anglo-Saxons afford some glimmering of legislation concerning it. By the laws of Ethelbert, the adulterer paid a fine to the husband, and bought another wife for him! Alfred fixed the fine at one-tenth of the offender's property.* After the Conquest, the benefit received by government, from these fines, is evident, from Domesday Book, where the levying of them is frequently mentioned. But though that foreign subjection was, in its own nature, productive of the Papal jurisdiction among us, and though it occasioned that first separation of the spiritual and temporal courts, which was so hostile to the genius of our Saxon judicature, yet, it does not appear, that ecclesiastical punishment, free from the controul of the Crown, was as yet applied to adultery. The period usually stated for the final se-

* This fine was known by the expressive name of "Letcherwite."

paration of the two authorities, was the reign of Henry I. And the distinct exercise of this ecclesiastical judgment was, after an interval of great turbulence, and the most dangerous encroachment, settled by Edward I. While he guarded the rights of his own crown, so lately violated, he surrendered, to the Clergy, the cognizance of things, "that be mere spiritual," and gave his permission, that, in all cases of "penance, enjoined by the Prelates, for deadly sin, as fornication, adultery, and such like, the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition."* And this seems

* This was the effect, not of the king's laxity, but of his vigour. The kingdom had been completely subjected to Rome, by his predecessors. His merit consisted in fixing again the civil and ecclesiastical jurisdictions, when it was no longer practicable to reunite the authorities upon the old plan. It was less dangerous to specify the objects of the Christian courts, than to let them extend to too many.

to have continued in force till the Reformation. It is only necessary to observe upon it, that the original punishment, inflicted by the Church, was corporal; and that it soon came to be commuted for money. But, by an auxiliary provision of Edward II. it was ordered, that, if the Church decreed a fine, in the first instance, preferring the money to a proper punishment, the king's prohibition immediately took place. And this shews us the true intention of the legislature, in surrendering to the Christian courts this branch of public punishment, which had formerly benefited the exchequer, by its impure produce: it was conceded for the sake of repressing personal licentiousness, by the characteristic punishment of personal exposure and disgrace.

That this was its object, has been more fully proved since our renunciation of Popery, by the projected *Reformatio legum*—

by the Canons of 1640—by the injunctions of King William, and the regulations under Queen Anne: for it was the declared intention of these provisions (though, indeed, they are not now in force), that no commutation should be allowed, except for very weighty reasons, and in very particular cases.

The sudden and great alteration in the penal laws, against adultery, which the republic produced among us, is commonly known. The saints of that day, affecting to revive all Scripture principles, once more looked into the Bible, for the Theocratic visitation of the crime: and “wilful adultery”* was again avenged by death.† This

* The rest of the act explains this phrase. Adultery was “wilful,” when the offender knew that the woman was married.

† There was a strange inconsistency, on this subject, which could only have arisen from an absurd resolution, to degrade the Clergy in every thing. They punished adultery with a high hand, as a heinous violation of a

statute not being sanctioned by the Restoration, things returned to their former footing. The Ecclesiastical courts, in pursuance of the authority, expressly reserved to them, at the Reformation, inflicted their punishments ; and the injured party has, besides, his private action against the offender, for the temporal damage he has sustained.

In the above sketch, you have seen the Imperial and Ecclesiastical authorities successively employed in the guardianship of the rights of marriage. The question will naturally occur, how it first happened that the former were replaced by the latter ; and how the functions of the State came to be discharged by the Church ? To this, it will be sufficient to answer, in general, that after the destruction of the Western Empire,

Divine institution ; and taking the celebration of marriage from a Divine order of men, entrusted it to the justices of the peace !

there arose a great confusion, from the multitude and variety of the old and new laws; and that the interpretation of difficult causes was, naturally, thrown into the hands of the best qualified among the ancient inhabitants: the invaders, too, becoming Christians, it was easy for the Ecclesiastics, from the fixure of their order, the standing means of subsistence, and study which they enjoyed, and the growing reverence, attached to their character, to make themselves the confidential directors of the throne, as well as to regulate the opinions of the people. In the affairs of marriage, therefore, the Churchmen arrived at their first agency, by commission from the throne: * from hence the distance was small

* *Parte per commissione, et parte per negligenza de' principi e magistrati. Hist. Tr. Lib. v.* The Twelfth Anathema of the Council of Trent is directed against the heresy of those who maintain, that causes matrimonial do not of right belong to the Ecclesiastical judge. The French Courts of Law were involved in this curse: for

to an exclusive management of a sacred institution, by a sacred order of men. To give full effect to these impressions, now, too, began to appear the Papal authority. The Romish writers, particularly their Ecclesiastical historians, are accustomed to return their thanks to Providence for that temporal power, which the see of St. Peter obtained in the eighth century ; and which, in their interpretation of it, divinely guarded the doctrine of their church from heretical or profane invasion. Soon after this, the code of the Canon Law began to be compiled : and the skill of the Ecclesiastics was employed in adapting the Civil Law of the

by an ordonnance of the fourteenth century, the cognizance of these causes was declared to belong to the secular judge only. *La connaissance du crime d'adultère appartient au juge Seculier, et ne peut jamais appartenir au juge de l'Eglise. Dict. de Droit, &c.* That there is a reasonable analogy between a Divine institution, and Ecclesiastical cognizance of the violation of it, cannot, I think, be denied. But it is obvious that I am speaking of it as a matter of history.

West,* under which they had, invariably, chosen to live, to its spiritual purposes : and its authority continued to increase, in a period highly favourable to its advancement, till, after so many other nations, it reached our own, in the twelfth century. About the time of the discovery of the Pandects, which was this very period, the great compilation of the Canon Law was also published, by Gratian ; and with the same address which had marked its appropriation of the older code, it now allied itself to the revived one ; and the earliest and most zealous studiers of Justinian were again the Ecclesiastics who had been best acquainted with Theodosius.

* The Western Empire ceased between the times of Theodosius and Justinian. It is probable that the laws of the latter were not generally known in Italy, or beyond Illyricum, till the discovery of the Apulian copy. Those of the former, in the affairs of marriage, as well as in certain contracts, merely civil, were consulted by the Goths and Lombards. There is the testimony of Agathias for this.

—Such seems to have been the process by which the Ecclesiastical courts obtained their cognizance of the crime of adultery. Du Cange gives us a list of such things as they had drawn within their own jurisdiction; whether they were properly sacred and scriptural, or of a civil nature.* And, at a time when their power was established among ourselves, that high and reverential notion of a *Sacrament* had begun to prevail, concerning the institution of marriage, which the mistake of a term had at first suggested, and which the Council of Trent afterwards confirmed in all the fullness of doctrine and authority.

If this is the history of adultery, and its punishment, what is to be concluded from it? Can we argue, as some do, that the Laws have always regarded this offence as

* In Voce, Curia Christianitatis.

only a private one, because it is now so considered ; and that to inflict a penalty, on the part of the public, would be to innovate on the principles of justice? You have seen the contrary. For what if the Church substituted its punishment for that of the State? Did the punishment cease, on that account, to be of a public nature? No; the principle was the same; the administration was different. Ecclesiastical judgment did but take up that which either the disinclination of the throne had relinquished, or its disability could not retain; and what had been dilapidated from the Imperial, went to the augmentation of the Canonical, law.

At present, however, it is notorious, that the public part of the punishment of adultery is mostly, if not altogether, dropt. The force of conscience, upon which the judgments of the Ecclesiastical Law depend, is decayed among us. The severi-

ties, which were once employed with so much effect upon the incontinent, have lost all their influence. It is obvious, that the exposure of the person is prevented by the refinement of modern manners; and that it will always degenerate into what the Legislature never wished to see—a commutation. And the refusal of admission to the Holy Communion, till the adulterer should reform, has no longer any of the ancient terror for those, whose lives so fatally convince us, that they have never yet regarded the Sacrament, as a Spiritual consolation. It would be equally useless to talk of that cognizance of adultery, which justices of the peace may take; or to allege that there is something penal in the very damages, which the husband recovers, from the party who has injured him. Yes; at this late time, we are worse than Ethelbert's men. We do not even buy other wives, for the consolation of the sufferers; we only take

away the first, and pay for them.* What remains then, but to renew the penalties in the most effectual manner, and invigorate the arm of the ancient authority? It is true, you cannot, by an act of the Legislature, restore the conscience; but you can punish the person: you cannot terrify the soul of the adulterer; but you can seize his body. And at least imprisonment, the mildest species of corporal suffering, ought to be put in force against him. In the case of the abduction of a man's wife, public fine, and imprisonment for two years, are added to the recovery of private damages; and both the king and the husband may have this action. Is the seduction of her, so much lighter in guilt, that the Crown shall have no plea against it; and barbarity be imputed to those, who would guard

* The lawlessness of the present gallantry, is exactly described in Seneca's words: *Satis justam causam putat amandi, quod aliena est; (scil. uxor.)*

the marriage vow, by a salutary increase of rigour against the invaders of it?

But, perhaps, there will be less disagreement on this point, than on another, which ought, notwithstanding, to accompany it. If such is to be the punishment of the adulterer, what is to be that of the companion of his crime? Is the dissolution of her marriage, and the consequent loss of reputation, a sufficient inconvenience to her? This cannot be; for, it is supposed, that, in some cases, such dissolution is the very object for which she commits adultery. Ought you to resign yourselves, as some have so pathetically exhorted you, to the force of sympathy, and suffer the criminal to escape your severity? This may be termed amiable; but it cannot be wise; and, on no account, ought the fleeting impulse of an ill-directed charity to be the substitute for the settled principles of a sound legislation.

By the Divine Laws, an equal obedience is due from all moral agents, and an equal punishment attaches to the violation of them. Human Laws come, as nearly as they can, to this principle: but as they are conversant, not in the primary and immutable duties, considered in themselves, but in our temporal situations as they are compounded with the duties, that modification of punishment is justly allowed by them, which the circumstances of society imperiously demand. The crime of the woman may, therefore, receive a chastisement, differing, in kind, from that of the man, but approaching it, in a quantity proportioned to her share of the guilt, and to the delicacy always due to her sex. The Catholic countries have found it easy to dispose of the adultress. They have convents, in which to hide her from the dangerous reproaches of the world, and to promote a return of sobriety to her mind.

By the old law of France, adopted from Justinian, who had also borrowed his principle from the Jews, there was an interval of two years from the proof of her offence; at the end of which the husband might take her home again. This period she passed as a secular, within a convent. If the husband did not recall her, but applied for the full execution of the law, it could not be refused him. She was shorn, and took the veil for life. Our only convent is our country; and the culprit must be at large in it; for an imprisonment of her, on a parity of punishment with the adulterer, is not to be thought of for a moment. But is there nothing that may be adopted from the accompanying ordinances of France? By one of them, the crime of the woman occasioned the forfeiture of her fortune to the husband.* If there were children, in-

* Le mari qui a convaincu sa femme d'adultère, gagne sa dot. Dict. de Droit Civil, &c. See the whole article of "Adultère."

deed, it belonged to them. But, in the mean time, the husband had the *usufruct* of the whole property, out of which he maintained the common family, and allowed to her an yearly sum which was barely competent to her support. Might not a regulation of this sort be attempted? Might not a certain part of her fortune be retained for her decent maintenance, while the rest of it is forfeited? Might not the Lord Chancellor, or Lord Chief Justice of the King's Bench be appointed the official Judge of her conduct? If she continued vicious, or drew impure gains from other quarters, might not the portion first awarded to her, revert to her family? If there were appearances of contrition and a better behaviour, might not the Judge have power to command from the husband a certain discreet addition to the allowance originally made? Here would be a sort of moral inspection, equally discouraging to the pro-

gress of viciousness, and promotive of a returning sobriety. I can but mention this generally. If you approve the principle now suggested, your wisdom will easily discover the particular modes in which it may best be carried into effect. This may be securely promised; for never was Parliament possessed of higher abilities, whether for debate or legislation. Much talent has been already called forth to the discussion of this question. Much yet remains behind. Among those who took no public part in it, when it was lately presented to you, there are persons (and I could name them) whose sage experience of life, whose extensive and solid knowledge of the principles of civil policy, whose settled attachment to the maintenance of public morals, and whose happy exemption from the fallacious impulses of all light theories of legislation, make it of public importance that they should give the power of their minds

to the consideration of it. For their assistance I venture to express my hopes. Meanwhile there is one maxim on which I must dwell with all earnestness. Whatever correction you apply to the evil, let it be but just sufficient for the purpose required; and, while you seek to repress offence, leave every possible opening to returning virtue. If the punishment goes beyond the necessity; if, in the violence of reform, terror is heaped upon terror, against the offenders (for morals too have their excesses, and virtue, sometimes, riots), it is easy to see the consequence. Society will grow universally depraved under a law superfluously rigorous. "Offences will come," and the passions will be more destructive in another direction. Terrified, at first, with thundering statutes, we shall learn to shelter ourselves from them under forced covers of our own invention. Every man, by degrees, will unguard the virtue of

his house, hitherto sacred ; and, through a corrupt agreement which will soon come to be generally understood, the husband will accommodate his neighbour, and be silently accommodated in return. Sad state of morals ! where Justice is completely disarmed by private compact, and a dreadful stillness is spread over universal guilt !

I have now fulfilled my intention. Having rectified what appeared to me to be erroneous, I have recommended that which strikes me as likely to be salutary to the state. In the latter part, I have endeavoured to find a substitute for that provision of the late Bill, the disinclination to which occasioned the failure of the whole measure. I speak of the prohibition of intermarriage to the adulterous parties. That disinclination still continues ; and, I am persuaded, it is of too strong a nature to be immediately surmounted. Not that it solidly rests upon any dreaded violation of the word of

God, but upon strong moral fears for the dangerous situation of the unhappy woman whom nobody can receive with any appearance of honour. A noble Viscount, indeed, whose share in this dispute does him credit, has expressed his persuasion, that the prohibition would offend against the Divine law. His cooler reflection will tell him that a permission conceded to our infirmities, and of which we may avail ourselves without sin, may, notwithstanding, be waved by us, if we are properly convinced that the public virtue is sufficiently strong to bear the voluntary privation. But experience tells us, that the Legislature has not yet admitted this conviction.*

* It would grieve me to have been employed in the maintenance of an argument contrary to the spirit of our actual legislation. It is, therefore, with great satisfaction I learn, that although about eight years after the first publication of this treatise, an order was made by the House of Lords, that, in every subsequent Bill of Divorce on account of Adultery, a clause should be inserted, prohibiting the intermarriage of the adulteress with the part-

On this account, and from the wish I feel that something may, at all events, be done in so important a concern, I take the liberty of suggesting to the Hon. Gentleman who will have to propose the question to the Lower House, whether it may not be most conducive to the public interest to relinquish the prohibitory part. If the candour of Mr. Perceval is equal to his talent, and I am persuaded it is, he will readily excuse me. It is only by such a discreet forbearance, that a just hope can be entertained of carrying the other points; and these, perhaps, may well suffice for the present exigency. At least an experiment may be made with the alterations now pro-

ner of her guilt, the order has not been enforced, and the clause has been generally omitted. If I am rightly informed, it has been carried into effect only in one very obnoxious case, where the intermarriage of the offending parties was otherwise liable to prohibition, on account of its coming within the line of the forbidden degrees.—
[1821.]

posed. If it shall be found hereafter that they are not equal to the necessity of the case, an advantage will be drawn from their very incompetency; and the minds of those who now refuse to listen to the proposal, will be impelled to the final reception of it by the moral demands of society.

I have now finished my discussion. And what is the general result from it? Against the noble Earl it has been proved, that the intermarriage of the adulteress with her seducer is not commanded by Heaven. Nor was this a difficult task. He could be no formidable antagonist, whose whole artillery, in this Scriptural field, was a single text of Deuteronomy, hastily seized, and wrongly applied. Accordingly, I have paid him but a cursory attention, and have contented myself with giving that general statement of the Mosaic Law, which was necessary to the completeness of my plan.—Against the learned Prelate, it has been

equally proved, (unless I flatter myself,) that, by the Divine Law, the divorced woman has not forfeited her general power of re-marriage. But, to accomplish this was not so easy: for, though his opinion was pronounced in a very summary manner, yet, his professional importance, and his Biblical reputation, which is high among us, threw upon me the necessity of an inquiry, more extensive and more critical: and I was obliged to proceed with good circumspection, and an appeal to the authority of greater names, ere I could prove his position to be erroneous, and its consequences fatal to the liberty of the Reformed Church.

To this has been added, for the conviction of those who would suppress every attempt to legislate on this point, the general history of the punishment of adultery among us. The revival of the spirit of the ancient penalties has been urged against the seducer, and, instead of the dreaded prohibition of

his intermarriage with the adulteress, that punishment of her has been recommended, which, while it may keep at a distance the enemies of her virtue, will, perhaps, impress a salutary caution on her own mind; the loss of her fortune, and official inspection of her moral conduct.

One word more concerning myself. If it should be inquired, what is the motive which has prompted me to step forward on this occasion? I will more fully avow it.—Next to the zeal (which is habitual and supreme with me), for the right interpretation of Scripture, and the universal establishment of its authority, has been the desire I have felt of vindicating the honour of Parliament. Yes, my Lords, and Gentlemen, the honour of Parliament. It is proper you should, at length, be acquainted with an opinion which has been maliciously propagated, that your late decision on this business was made with a wilful contempt of

the Divine command. That opinion chiefly rests on the authority of the learned Prelate, whose doctrine of the perpetual adultery, inherent in those marriages, the prohibition of which you refused to sanction, has been adduced, to prove that your conduct was careless, because your principles were Antichristian! It is sufficient, perhaps, that Parliament should suffer from the standing malignity of its enemies: must it be assaulted through the unguarded side of its friends too?—It is sufficient, that revolutionary rage should be ever at hand to pervert your views, however patriotic, to calumniate your legislation, however beneficial. Must you be branded with the additional charge of Profaneness? And shall no attempt be made to repel so new a calumny? No; it was impossible to allow, with impunity, another inlet to defamation. It was impossible to be easy, while, with a sanctimonious concern for your character,

and an affected anxiety for your welfare, you were represented as opposers of the voice of God, as well as enemies of the happiness of man; equally regardless of our domestic virtue, and our public peace. I could enlarge upon this; but there are many reasons for not proceeding farther. I have done what appeared to be not foreign from my duty, and am content. I only wish it were possible for me to remove the perverse impression, which the late discussion has occasioned, by any means more effectual than the circulation of this Treatise. But this only is allowed to me. It may be defective, but it is earnest and sincere: it is inadequate to my desires, yet, capable, perhaps, of producing some benefit. At all events, it has been written with a determined attachment to the sovereign authority of Scripture; with zeal for the public esteem of Parliament; and

an endeavour to avert, at least, one blow from the honour of my Country.

I now take my leave. My private duties recall me from too long an excursion.—
Reddar tenebris.

THE END.

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